



# **Antarctic Treaty (Environment Protection) Act 1980**

**No. 103, 1980 as amended**

**Compilation start date:** 24 June 2014

**Includes amendments up to:** Act No. 31, 2013

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### **This compilation**

This is a compilation of the *Antarctic Treaty (Environment Protection) Act 1980* as in force on 24 June 2014. It includes any commenced amendment affecting the legislation to that date.

This compilation was prepared on 24 June 2014.

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of each amended provision.

### **Uncommenced amendments**

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in the endnotes.

### **Application, saving and transitional provisions for provisions and amendments**

If the operation of a provision or amendment is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### **Modifications**

If a provision of the compiled law is affected by a modification that is in force, details are included in the endnotes.

### **Provisions ceasing to have effect**

If a provision of the compiled law has expired or otherwise ceased to have effect in accordance with a provision of the law, details are included in the endnotes.

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## **An Act relating to the Antarctic and the protection and conservation of the environment of the Antarctic, and for related purposes**

WHEREAS Australia is a Party to the Convention for the Conservation of Antarctic Seals:

AND WHEREAS it is desirable to make provision for giving effect to that Convention:

AND WHEREAS Australia is a party to the Antarctic Treaty and the Protocol on Environmental Protection to the Antarctic Treaty:

AND WHEREAS it is desirable to make provision for giving effect to that Treaty and Protocol:

AND WHEREAS it is desirable to make other provision relating to the protection of the environment in the Antarctic:

BE IT THEREFORE ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

### **Part 1—Preliminary**

#### **1 Short title**

This Act may be cited as the *Antarctic Treaty (Environment Protection) Act 1980*.

#### **2 Commencement**

- (1) Subject to subsection (2), this Act shall come into operation on the day on which it receives the Royal Assent.
- (2) Sections 16 to 21 (inclusive) shall come into operation on the expiration of 6 months after the day on which this Act receives the Royal Assent.

### 3 Interpretation

(1) In this Act, unless the contrary intention appears:

***aircraft*** means a machine or apparatus that can derive support in the atmosphere from the reactions of the air or from buoyancy, but does not include a hovercraft.

***animal*** includes:

- (a) a native bird, a native invertebrate and a native seal; and
- (b) an egg, part of an egg and an eggshell; and
- (c) a dead animal and part of a dead animal (but not something manufactured from a dead animal or from part of a dead animal).

***another Contracting Party*** means a Contracting Party to the Treaty other than Australia.

***Antarctic*** means the area south of 60° south latitude, including all ice shelves in the area.

***Antarctic specially managed area*** means an area declared to be an Antarctic specially managed area under section 8.

***Antarctic specially protected area*** means an area declared to be an Antarctic specially protected area under section 8.

***article*** includes a substance or a mixture of substances.

***Australia*** includes all the Territories.

***Australian expedition*** means an expedition organized by one or more of any of the following:

- (a) an Australian organization;
- (b) an Australian citizen;
- (c) a person resident or domiciled in Australia.

***Australian national*** means:

- (a) an Australian citizen; and
- (b) a body corporate that is incorporated in Australia or carries on its activities mainly in Australia.



***Australian organization*** means:

- (a) a corporation that is incorporated in Australia or whose activities are carried on principally in Australia; or
- (b) an unincorporated body or association the majority of whose members are Australian citizens or domiciled in Australia.

***Australian property*** means property that:

- (a) in the case of an aircraft or vessel—is in Australian control or is registered in accordance with the Civil Aviation Regulations as an Australian aircraft or, as the case may be, registered in Australia under an Act or Imperial Act relating to the registration of ships that is applicable throughout the whole of Australia (not being an Act or Imperial Act relating to the registration of ships for a particular purpose or purposes only); or
- (b) in any other case—is in Australian control.

***basic environmental principles*** means the environmental principles set out in Article 3 of the Madrid Protocol.

***CAMLR Convention*** means the Convention on the Conservation of Antarctic Marine Living Resources, a copy of the English text of which is set out in the Schedule to the *Antarctic Marine Living Resources Conservation Act 1981*.

***CEMP site*** means a monitoring site:

- (a) established for the purposes of the Ecosystem Monitoring Program conducted by the Parties to the CAMLR Convention; and
- (b) the management plan for which has been adopted by the Commission for the Conservation of Antarctic Marine Living Resources in accordance with Conservation Measure 18/IX adopted by the Commission, which became binding on Australia on 7 May 1991.

***civil penalty order*** has the meaning given by subsection 22(4).

***civil penalty provision***: a provision of this Act is a ***civil penalty provision*** if:

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- (a) the provision sets out at its foot a pecuniary penalty, or penalties, indicated by the words “Civil penalty”; and
- (b) the provision is a subsection, or a section that is not divided into subsections.

**collect**, in relation to a native plant, includes severing, or applying any substance harmful to, the plant.

**contravention**, in relation to a provision, includes a failure to comply with that provision.

**corresponding law** means a law of another Contracting Party, as in force for the time being, giving effect to the Treaty or the Madrid Protocol.

**Court** means:

- (a) the Federal Court of Australia; or
- (b) the Federal Circuit Court of Australia; or
- (c) the Supreme Court of a State or Territory; or
- (d) a District, County or Local Court of a State or Territory; or
- (e) a Magistrates Court of a State or Territory.

**disturb** an animal means cause a change in the animal’s behaviour otherwise than by physical contact with the animal.

**drive**, in relation to an aircraft, means to cause the aircraft to travel on land or water.

**evidential burden**, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

**foreign** means of or pertaining to a country other than Australia.

**historic monument** means a monument declared to be an historic monument under section 8A.

**historic site** means a site declared to be an historic site under section 8A.

**ice** includes snow.

***in Australian control*** means in the control or possession of one or more of any of the following:

- (a) the Commonwealth (including an arm of the Defence Force) or a State or Territory;
- (b) a corporation established for a public purpose by or under a law of the Commonwealth or of a State or Territory;
- (c) a company or other body corporate incorporated under a law of a State or Territory, being a company or other body corporate in which the Commonwealth has a controlling interest;
- (d) a person who, or persons each of whom, is a person to whom this Act applies by virtue of paragraph 4(1)(b).

***indigenous to the Antarctic*** includes occurring in the Antarctic through natural agencies of dispersal.

***inspector*** means:

- (a) a person appointed as an inspector under section 13; or
- (b) a person referred to in section 14.

***interfere*** has a meaning affected by subsection (7).

***land***:

- (a) when used as a verb in relation to an aircraft, includes to cause the aircraft to alight on water; and
- (b) when used as a noun, includes ice.

***Madrid Protocol*** means the Protocol on Environmental Protection to the Antarctic Treaty, a copy of the English text of which (apart from Annex IV to it) is set out in Schedule 3, being the Protocol done, and opened for signature, at Madrid on 4 October 1991 to which, in accordance with Recommendation XVI-10 adopted by the XVIth Antarctic Treaty Consultative Meeting at Bonn on 18 October 1991, the Annex attached to that Recommendation has been added as Annex V to the Protocol.

***mineral*** means any non-living, non-renewable natural resource.

***mining activity*** means an activity carried on for, or in connection with, the recovery or exploitation of minerals (including

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prospecting and exploring for minerals), but does not include an activity that is necessary for scientific investigation or scientific research within the meaning of the Treaty.

**native bird** means:

- (a) a member, at any stage of its life cycle (including an egg, part of an egg and an eggshell), of any species of bird that is indigenous to the Antarctic; or
- (b) a dead bird, or any part of a dead bird, of any species referred to in paragraph (a).

**native invertebrate** means any terrestrial or fresh water invertebrate, at any stage of its life cycle, indigenous to the Antarctic.

**native plant** means any kind of vegetation, at any stage of its life cycle (including seeds), indigenous to the Antarctic.

**native seal** means:

- (a) a member, at any stage of its life cycle, of any species of seal that is indigenous to the Antarctic; or
- (b) a dead seal, or any part of a dead seal, of a species mentioned in paragraph (a).

**permit** means a permit in force under Part 2 of this Act.

**plant** includes a native plant.

**property** means property of any description and, without limiting the generality of the foregoing, includes aircraft and vessels.

**recognised foreign authority** means a permit, authority or arrangement that:

- (a) authorises the carrying on of an activity in the Antarctic; and
- (b) either:
  - (i) has been issued, given or made by a Party (other than Australia) to the Madrid Protocol that has accepted under that Protocol the same obligations as Australia in relation to the carrying on of that activity in the Antarctic; or

- (ii) has been issued, given or made by a Party (other than Australia) to the Seals Convention that has accepted under that Convention the same obligations as Australia in relation to the carrying on of that activity in the Antarctic.

**Seals Convention** means the Convention for the Conservation of Antarctic Seals (a copy of the English text of which is set out in Schedule 1) as affected by the amendments to the Annex to the Convention that:

- (a) were recommended by the representatives of the Contracting Parties to the Convention at their 1988 Meeting to Review the Operation of the Convention; and
- (b) were included in paragraphs 21, 31 and 36 of their Report of that meeting, a copy of the English text of which is set out in Schedule 2; and
- (c) became effective on 27 March 1990.

**pecially protected species** means a specially protected species of native seal, native bird or native plant declared under section 7C.

**take**, in relation to a native bird or native seal, includes catch or capture.

**Territory** means the Australian Antarctic Territory.

**this Act** includes the regulations.

**Treaty** means the Antarctic Treaty set out in the Schedule to the *Antarctic Treaty Act 1960*, including any modification or amendment of that Treaty made after the commencement of this section and for the time being in force as to Australia.

**vehicle** includes a hovercraft.

**vessel** means a vessel or boat of any description and includes any floating structure, but does not include a hovercraft.

- (2) Unless the contrary intention appears, a reference in this Act to a virus or bacterium shall be read as including a reference to an article containing, or an article, animal or plant infected by, a virus or bacterium.

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- (3) A reference in this Act to an offence shall be read as including a reference to an offence against section 6 of the *Crimes Act 1914*, or against section 11.1, 11.4 or 11.5 of the *Criminal Code*, in relation to this Act.
- (4) A reference in this Act to a member of the Australian Federal Police or to a member of a police force shall be read as including a reference to a special member of the Australian Federal Police.
- (5) Except so far as the contrary intention appears, an expression that is used in both this Act and either the Treaty or the Madrid Protocol (whether or not a particular meaning is assigned to it by the Treaty or the Protocol) has, in this Act, the same meaning as in the Treaty or the Protocol, as the case may be.
- (6) Except so far as the contrary intention appears, an expression that is used in both this Act and in the Seals Convention (whether or not a particular meaning is assigned to it by that Convention) has, in this Act, the same meaning as in the Convention.
- (7) A reference in this Act to otherwise interfering with, or causing other interference with, an animal does not include a reference to disturbing the animal.

Note: *Disturb* is defined in subsection (1).

#### 4 Application of Act

- (1) Subject to subsection 4(1) of the *Antarctic Treaty Act 1960*:
  - (a) this Act applies in the Territory in relation to any persons and property, including foreign persons and property; and
  - (b) this Act applies outside Australia in relation to:
    - (i) Australian citizens;
    - (ii) Australian expeditions and members of Australian expeditions;
    - (iii) Australian organizations;
    - (iv) members of the crew (including persons in charge) of aircraft, vessels or vehicles that are Australian property; and
    - (v) Australian property.

- (2) This Act has effect subject to:
- (a) the obligations of Australia under international law, including obligations under any international agreement binding on Australia; and
  - (b) any law of the Commonwealth giving effect to such an agreement.

## **5 Extension of Act to Territories**

This Act extends to every external Territory.

## **6 Crown to be bound**

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to a pecuniary penalty or to be prosecuted for an offence.

## **6A Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

## **6B Contravening offence and civil penalty provisions**

- (1) This section applies if a provision of this Act declares that a person contravening another provision of this Act (the ***conduct rule provision***):
  - (a) commits an offence; or
  - (b) is liable for a civil penalty.
- (2) For the purposes of this Act, the person is taken to contravene the offence or the civil penalty provision (as the case requires) if the person contravenes the conduct rule provision.

## 7 Application of other laws

- (1) Notwithstanding any other law, but subject to the regulations, no action or proceeding lies against any person for or in relation to anything done by that person to the extent that it is authorized by a permit or by a recognised foreign authority.
- (2) Where a provision of Division 4 of Part 15 of the *Environment Protection and Biodiversity Conservation Act 1999* is inconsistent with a provision of this Act, then, except as otherwise specifically provided by a provision of that or any other Act coming into operation after the commencement of this Act, the latter prevails, and the former has, to the extent of the inconsistency, no effect, but, subject to subsection (1), provisions shall not be taken for the purposes of this subsection to be inconsistent to the extent that they are capable of operating concurrently.
- (3) Subject to paragraph 4(2)(b), where regulations made for the purposes of section 356 of the *Environment Protection and Biodiversity Conservation Act 1999* are inconsistent with regulations made under this Act, the latter prevail, and the former have, to the extent of the inconsistency, no effect, but, subject to subsection (1), regulations shall not be taken for the purposes of this subsection to be inconsistent to the extent that they are capable of operating concurrently.
- (4) A provision of the regulations regulating or prohibiting the flying of aircraft over a specified area of the Antarctic does not have any force or effect to the extent to which it is inconsistent with a law of the Commonwealth or a corresponding law, but such a provision shall not be taken for the purposes of this subsection to be inconsistent with such a law to the extent that it is capable of operating concurrently with that law.
- (5) A law of the Territory has effect to the extent to which it is not inconsistent with a provision of the regulations, but such a law shall not be taken for the purposes of this subsection to be inconsistent with such a provision to the extent that it is capable of operating concurrently with that provision.
- (6) In this section, *this Act* does not include the regulations.



**7A Necessity to act in accordance with basic environmental principles**

In exercising powers and performing duties under this Act, the Minister must act in a manner that is consistent with the basic environmental principles.

## Part 2—Conservation of Antarctic fauna and flora

### 7C Specially protected species

- (1) Subject to subsection (2), if a species of native seal, native bird or native plant is specified in Annex II to the Madrid Protocol for the purpose of designation as a specially protected species, the Minister may, by notice in the *Gazette*, declare that species to be a specially protected species.
- (2) If a species of native seal or native bird was, immediately before the commencement of this section, a specially protected species because of a declaration under subsection 8(7) as then in force, that declaration has effect, for the purposes of this Act, as if it were a declaration made under subsection (1) on the commencement of this section.
- (3) The Minister may, by notice published in the *Gazette*, vary or revoke a declaration made under subsection (1) or referred to in subsection (2).

### 8 Antarctic specially protected areas etc.

- (1) In this section:  
*area* means:
  - (a) an area of land or sea within the Antarctic; or
  - (b) an area of any such land and any such sea.
- (2) Subject to subsection (4), the Governor-General may:
  - (a) by Proclamation, declare an area specified in the Proclamation to be an Antarctic specially protected area; and
  - (b) by the same or by another Proclamation, declare an area specified in the Proclamation to be an Antarctic specially managed area.
- (3) An area may not be declared to be an Antarctic specially protected area or an Antarctic specially managed area unless the Antarctic

Treaty Consultative Parties have adopted a management plan in respect of the area under Article 6 of Annex V to the Madrid Protocol.

- (4) If an area is declared by Proclamation under subsection (2) to be an Antarctic specially protected area or an Antarctic specially managed area:
- (a) the subsoil beneath any land within the area, extending to the depth below the surface that is specified in the Proclamation; and
  - (b) the waters and sea-bed beneath any ice shelf or sea within the area; and
  - (c) the subsoil beneath any such sea-bed, extending to the depth below the sea-bed that is specified in the Proclamation;
- is taken to be within the Antarctic specially protected area or the Antarctic specially managed area.
- (5) An area that was, immediately before the commencement of this section, a specially protected area or a site of special scientific interest is taken, for the purposes of this Act, to have been declared to be an Antarctic specially protected area by a Proclamation made under subsection (2) on the commencement of this section.
- (6) The Governor-General may, by Proclamation:
- (a) vary the boundaries of an Antarctic specially protected area or Antarctic specially managed area in accordance with an amendment of the management plan adopted by the Antarctic Treaty Consultative Parties; or
  - (b) revoke a declaration made, or taken to have been made, under subsection (2) if the management plan in respect of the area to which the declaration relates is revoked.

### **8A Historic sites and monuments**

- (1) Subject to subsection (2), the Governor-General may, by Proclamation, declare a site or monument specified in the Proclamation to be an historic site or an historic monument.
- (2) A site or a monument may not be declared to be an historic site or an historic monument unless the Antarctic Treaty Consultative
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Parties have approved the listing of the site or monument as an historic site or an historic monument under Article 8 of Annex V to the Madrid Protocol.

- (3) The Governor-General may, by Proclamation, vary or revoke a Proclamation made under subsection (1) in respect of a site or monument if the Antarctic Treaty Consultative Parties have amended or revoked the listing of the site or monument as an historic site or historic monument.

### **9 Grant and renewal of permit**

- (1) On application to the Minister in the prescribed form (or, if no form is prescribed, in a form approved by the Minister), the Minister may grant a person a permit in writing authorising the person, and any other person named in the permit, to carry on, during a specified period, one or more of the activities specified in the permit.
- (1AA) The activities that may be authorised by a permit are the following:
- (a) an activity that has a result mentioned in paragraph 19(1A)(b);
  - (b) an activity mentioned in paragraph 19(1)(b);
  - (c) an activity mentioned in paragraph 19(1)(c);
  - (d) an activity mentioned in paragraph 19(1)(d);
  - (e) an activity mentioned in subsection 19(2) (other than paragraph (g));
  - (f) an activity mentioned in paragraphs 19AA(1)(a) and (b);
  - (g) an activity mentioned in paragraph 19AA(2)(a), if the rock or meteorite is to be gathered or collected in the Antarctic;
  - (h) an activity mentioned in paragraph 19AB(a), if the seal, bird or plant is a native seal, native bird or native plant.
- (1AB) Subsection (1) is subject to this section and to section 10.
- (1AC) The Minister may grant a permit under subsection (1) subject to such conditions as the Minister thinks fit.
- (1A) The permit must specify the area in which the activity is to be carried on.
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- (2) In deciding whether to grant a permit, and in determining the conditions and limitations to which a permit is to be subject, the Minister must have regard to:
- (a) the purposes and principles of the Madrid Protocol; and
  - (b) if the decision could affect a seal in seas to which the Seals Convention applies—the purposes and principles of the Seals Convention.
- (2A) The Minister may not grant a permit authorising an activity to which Part 3 applies unless the Minister has, under that Part, authorised the proponent of the activity (within the meaning of that Part) to carry on the activity.
- (2B) The Minister may not grant a permit authorising a person to carry on an activity in a CEMP site unless a permit authorising the person to enter the site has been granted:
- (a) under regulations made under the *Antarctic Marine Living Resources Conservation Act 1981*; or
  - (b) by another Contracting Party to the CAMLR Convention.
- (3) An application made under subsection (1) by an expedition or organization shall specify:
- (a) in the case of an expedition—every member of the expedition; or
  - (b) in the case of an organization—every person authorized by the organization to act on its behalf;
- and the permit may be expressed to apply to all those members or persons or to such of them as are specified in the permit.
- (4) Where, subsequent to the grant of a permit to an organization, the persons authorized to act on behalf of the organization include a person or persons not referred to in subsection (3), the organization shall forthwith inform the Minister accordingly, and the Minister may, by notice in writing to the organization, extend or refuse to extend the application of the permit to that person or those persons.
- (5) The Minister shall cause to be kept, in such manner and at such place as he or she directs, a register of permits in force from time to time, showing the purpose for which and the conditions upon
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which each permit was granted and such other matters relating to each permit as the Minister thinks fit.

(7) In this section, *grant* includes grant by way of renewal.

**9A Authorities under permits**

- (1) A person who is a principal under a permit (see subsection (6)) may authorise, as necessary, other persons to accompany one or more of the principals under that permit in carrying on activities authorised by the permit.
- (2) A principal must not authorise a person under subsection (1) unless:
  - (a) the permit contains a condition allowing principals to do so; and
  - (b) the authorisation is given in accordance with any requirements set out in that condition and any other conditions contained in the permit.
- (3) A person authorised to accompany principals under a permit must comply with the conditions of the permit.
- (4) Subject to subsection (3), a permit is, for the purposes of this Act, taken to authorise the carrying on by a person authorised under subsection (1) of any activity specified in the permit.
- (5) The authorisation of a person under subsection (1) does not prevent a principal under that permit from carrying on any activities.
- (6) In this section:

*principal*, under a permit, means a person:

  - (a) to whom the permit was granted under subsection 9(1); or
  - (b) who is named in the permit.

**10 Restrictions applicable to permits**

- (1) A permit shall not authorize a person to kill, take, injure or otherwise interfere with a native bird or native seal unless:
  - (a) the Minister is satisfied that:

- (i) the number of birds or seals of any species that may be killed or taken from local populations in that year by virtue of that permit and all other permits granted under section 9 and by virtue of corresponding laws will be replaced in the immediately succeeding breeding season by natural reproduction; and
  - (ii) the variety of species, the habitats essential to their existence and the balance of the natural ecological systems existing within the Antarctic will be maintained; and
- (b) the permit is so expressed as to ensure, as far as possible, that the activities authorized by the permit will be carried on to the extent only that they are necessary for:
- (i) if the permit relates to native birds—the construction and operation of scientific support facilities; or
  - (ii) if the permit relates to native birds or native seals—providing specimens for scientific research, public education (including display in museums, zoological gardens or other educational or cultural institutions) or such other educational or cultural purposes as the Minister thinks fit; or
  - (iii) if the permit relates to native birds—monitoring or conserving the environment or an historic site or monument; or
  - (iv) if the permit relates to native birds—providing for unavoidable consequences of scientific activities not authorised under subparagraph (ii); and
- (c) in the case of a permit relating to a specially protected species:
- (i) the permit is granted for a compelling scientific purpose; and
  - (ii) the Minister is satisfied that the activities authorized by the permit will not jeopardize the existing ecological system or the survival or recovery of that species or of the local population of that species.
- (1A) A permit authorising a person to kill, take, injure or otherwise interfere with a native bird or seal must specify as a condition of

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the permit that the bird or seal is to be dealt with in the manner that involves the least degree of pain and suffering practicable.

- (1B) A permit must not authorise a person to gather, collect, endanger or otherwise interfere with a native plant unless:
- (a) the Minister is satisfied, after taking into account the number of native plants of any species that may be affected because of that permit and all other permits granted under section 9 or under corresponding laws, that the variety of species of native plants, the habitats essential to the existence of native seals, native birds, native invertebrates and native plants, and the balance of the natural ecological systems, existing within the Antarctic will be maintained; and
  - (b) the permit is so expressed as to ensure, as far as possible, that the activities authorised by the permit will be carried on to the extent only that they are necessary for:
    - (i) the construction and operation of scientific support facilities; or
    - (ii) providing specimens for scientific research, public education (including display in museums, herbaria, botanical gardens or other educational or cultural institutions) or such other educational or cultural purposes as the Minister thinks fit; or
    - (iii) monitoring or conserving the environment or an historic site or monument; or
    - (iv) providing for unavoidable consequences of scientific activities not authorised under subparagraph (ii); and
  - (c) in the case of a permit relating to a specially protected species:
    - (i) the permit is granted for a compelling scientific purpose; and
    - (ii) the Minister is satisfied that the activities authorised by the permit will not jeopardise the existing ecological system or the survival or recovery of that species or of the local population of plants of that species.
- (1C) A permit authorising a person to gather or collect a meteorite, or to remove a rock or a meteorite, must be expressed so as to ensure, as far as possible, that the activities authorised by the permit will be
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carried on only to the extent that they are necessary for providing specimens for scientific research, public education (including display in museums or other educational or cultural institutions) or such other educational or cultural purposes as the Minister thinks fit.

- (1D) A permit authorising a person to bring into the Antarctic a native seal, native bird or native plant must be expressed so as to ensure, as far as possible, that the person takes all reasonable precautions to prevent the introduction of micro-organisms not present in the Antarctic.
- (2) A permit must not authorise a person to bring into the Antarctic:
- (a) a dog; or
  - (b) a live bird that is not indigenous to the Antarctic.
- (3) A permit shall not authorize a person to bring into the Antarctic an animal (other than a dog or live bird), plant, virus, bacterium, yeast or fungus that is not indigenous to the Antarctic unless it is of a kind specified in the permit, being a kind specified in Annex II to the Madrid Protocol for the purposes of the grant of such a permit.
- (4) The conditions of a permit authorizing the bringing into the Antarctic of an animal, plant, virus, bacterium, yeast or fungus that is not indigenous to the Antarctic and might cause harmful interference with the natural system if left unsupervised within the Antarctic shall include the condition that it shall be:
- (a) kept under such control as is specified in the permit; and
  - (b) removed from the Antarctic or destroyed:
    - (i) if it has served its purpose before the permit ceases to be in force—as soon as possible after it has served its purpose; or
    - (ii) if subparagraph (i) does not apply—when the permit ceases to be in force.
- (5) A permit authorising a person to bring into the Antarctic animals or plants that are not indigenous to the Antarctic must:
- (a) specify:
    - (i) the number of animals or plants to which the permit relates; and
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- (ii) the species of the animals or plants; and
    - (iii) if appropriate in the case of a permit relating to animals—the age and sex of each of the animals; and
  - (b) specify as a condition of the permit that the person must take all reasonable precautions to prevent any of the animals from escaping or any of the animals or plants from coming in contact with the native fauna or flora.
- (6) A permit shall not authorize any activity to be carried on in an Antarctic specially protected area in respect of which a management plan has not been adopted; unless:
- (a) the activity is to be carried on for a compelling scientific purpose which cannot be served elsewhere; and
  - (b) the Minister is satisfied that the activity will not jeopardize the natural ecological system existing in that area.
- (7) A permit must not authorise any activity to be carried on in an Antarctic specially protected area in respect of which a management plan has been adopted unless the activity can be carried on in accordance with the management plan.
- (8) A permit authorising a person to carry on an activity in an Antarctic specially protected area must specify as a condition of the permit that the person must have the permit in his or her possession when the person is in the area.

**11 Variation, suspension and revocation of permits**

- (1) The Minister may, by notice in writing served personally, by post or otherwise as prescribed on the holder of the permit, vary, suspend or revoke a permit where he or she is satisfied that a provision of this Act relating to the permit or a condition of the permit has been contravened or that it is necessary or expedient to do so in order to conserve and protect the fauna and flora of the Antarctic.
- (1A) If the holder of a permit so requests in writing (giving reasons for the request), the Minister may, by notice in writing served as provided in subsection (1), vary the permit if the Minister is satisfied that:

- (a) the reasons given justify the variation; and
  - (b) the permit if varied would not authorise any activity that is likely to affect adversely the conservation or protection of the fauna and flora of the Antarctic.
- (2) Subject to subsection (3), a permit shall not be suspended for a period exceeding 90 days.
  - (3) Where proceedings for an offence in relation to a permit are commenced during the period of suspension of the permit, the suspension may be continued until the proceedings (including any appeal) are completed.
  - (4) During the period of suspension of a permit, the permit has no force or effect, but the period of currency of the permit continues to run.
  - (5) The suspension of a permit does not prevent its revocation.

## **12 Variation and revocation of conditions**

- (1) Subject to this section, the Minister may, while a permit is in force, by notice in writing served personally, by post or otherwise as prescribed on the holder of the permit, vary or revoke any of the conditions of the permit or impose further conditions.
- (2) In deciding whether to vary or revoke any of the conditions of a permit or to impose further conditions, the Minister must have regard to:
  - (a) the purposes and principles of the Madrid Protocol; and
  - (b) if the decision could affect a seal in seas to which the Seals Convention applies—the purposes and principles of the Seals Convention.

## **Part 3—Environmental impact assessment**

### **12A Interpretation**

In this Part, unless the contrary intention appears:

*environment* means the Antarctic environment and dependent and associated eco-systems.

### **12B Object of Part**

The object of this Part is to provide for:

- (a) the assessment of proposed activities in the Antarctic to identify the impact that they are likely to have on the environment; and
- (b) the regulation of activities that are likely to have an adverse impact on the environment.

### **12C Part does not apply to certain activities**

- (1) The Minister may determine in writing that this Part does not apply to activities of a kind specified in the determination if the Minister is satisfied that, because of their nature, those activities are likely to have no more than a negligible impact on the Antarctic environment.
- (2) This Part does not apply to:
  - (a) any mining activity; and
  - (b) any activity of a kind specified in a determination under subsection (1).

### **12D Preliminary assessment of likely impact of activity on Antarctic environment**

- (1) If, after the commencement of this Part:
    - (a) a person or organisation proposes to carry on an activity in the Territory; or
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- (b) a person or organisation in relation to whom this Act applies outside Australia proposes to carry on an activity in an area of the Antarctic other than the Territory;
- the person or organisation proposing to carry on the activity (the **proponent of the activity**) must:
- (c) make, or cause to be made, a preliminary assessment of the impact (if any) that the activity is likely to have on the environment; and
  - (d) give a written report of the assessment to the Minister.
- (2) If:
- (a) after the commencement of this Part, a change is proposed, or occurs, in an activity (**original activity**) that was being carried on immediately before the commencement of this Part; or
  - (b) a change is proposed, or occurs, in an activity (**original activity**) that is authorised to be carried on under this Part;
- the activity as proposed to be changed, or as changed, is to be treated, for the purposes of subsection (1), as being a new activity (different from the original activity) that a person or organisation proposes to carry on.

**12E Preliminary determination of likely impact of activity**

After considering the preliminary assessment, the Minister must:

- (a) determine whether the activity is likely to have:
  - (i) more than a minor or transitory impact; or
  - (ii) a minor or transitory impact; or
  - (iii) no more than a negligible impact;on the environment; and
- (b) inform the proponent of the activity in writing of his or her decision.

**12F Activity to proceed if impact negligible**

- (1) If the Minister determines that the activity is likely to have no more than a negligible impact on the environment, the Minister must, by

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notice in writing, authorise the proponent of the activity to carry on the activity.

- (2) The authorisation may be given subject to the conditions specified in the notice being complied with.

### **12G Initial environmental evaluation**

- (1) If the Minister determines that the activity is likely to have a minor or transitory impact on the environment, the proponent of the activity must prepare or cause to be prepared, and give to the Minister, an initial environmental evaluation in respect of the activity.
- (2) An initial environmental evaluation in respect of an activity is a written report that:
  - (a) contains (but is not limited to) the matters that under the regulations are required to be included in the evaluation; and
  - (b) assesses the impact that the activity is likely to have on the environment in a manner that allows for a reasoned conclusion to be reached whether the activity is to have:
    - (i) a minor or transitory impact; or
    - (ii) more than a minor or transitory impact; on the environment; and
  - (c) if the assessment indicates that the impact on the environment is likely to be minor or transitory—makes recommendations as to the measures considered necessary for assessing and verifying any impact on the environment.
- (3) If, after considering the initial environmental evaluation, the Minister is of the view that additional information is required to make a determination under section 12H, or to impose conditions on the giving of an authorisation under section 12J, the Minister may request in writing the proponent of the activity to submit a revised evaluation that contains the additional information required.

**12H Determination of likely impact of activity based on initial environmental evaluation**

After considering the initial environmental evaluation or the revised initial environmental evaluation (as the case may be), the Minister must determine whether the activity is likely to have:

- (a) a minor or transitory impact; or
- (b) more than a minor or transitory impact; on the environment.

**12J Authorisation of activity likely to have minor etc. impact on environment**

- (1) If the Minister determines that the activity is likely to have a minor or transitory impact on the environment, the Minister must, by notice in writing, authorise the proponent of the activity to carry on the activity.
- (2) The authorisation may be given subject to the conditions specified in the notice being complied with, being conditions imposed to ensure that the activity is carried on in a manner that is consistent with the basic environmental principles.
- (3) The conditions must include (but are not limited to) conditions requiring that specified procedures aimed at assessing, verifying and limiting the impact of the activity on the environment are complied with.
- (4) The authorisation is also subject to any prescribed condition.

**12K Comprehensive environmental evaluation**

- (1) If the Minister determines under section 12E or 12H that the activity is likely to have more than a minor or transitory impact on the environment, the proponent of the activity must prepare or cause to be prepared, and give to the Minister:
    - (a) a draft comprehensive environmental evaluation in relation to the activity; and
    - (b) after the procedures provided for in the regulations for dealing with a draft comprehensive environmental evaluation
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have been complied with—a final comprehensive environmental evaluation in relation to the activity.

- (2) A draft comprehensive environmental evaluation and a final comprehensive environmental evaluation are reports that each:
  - (a) contain (but are not limited to) the matters that under the regulations are to be included in an evaluation of that kind; and
  - (b) make a comprehensive assessment of the impact that the activity is likely to have on the environment; and
  - (c) make recommendations as to the measures (if any) considered necessary for assessing and verifying any impact on the environment.
- (3) The regulations may provide for the procedures to be followed by the Minister in dealing with:
  - (a) a draft comprehensive environmental evaluation; and
  - (b) a final comprehensive environmental evaluation;received by the Minister under this section.

**12L Authorisation of activity likely to have more than minor etc. impact on environment**

- (1) After dealing with the final comprehensive environmental evaluation in relation to the activity as required under the regulations, the Minister must decide whether or not to authorise the carrying on of the activity.
  - (2) If, having regard to the contents of the final comprehensive environmental evaluation and any other relevant consideration, the Minister is satisfied that the activity, either as proposed or with certain modifications, can be carried on in a manner consistent with the basic environmental principles, the Minister must, by notice published in the *Gazette*, authorise the proponent of the activity to carry on the activity as proposed or modified.
  - (3) The authorisation may be given subject to the conditions specified in the notice being complied with, being conditions imposed to ensure that the activity is carried on in a manner that is consistent with the basic environmental principles.
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- (4) The authorisation is also subject to any prescribed condition.
- (5) If the Minister is not satisfied as provided in subsection (2), the Minister must not authorise the carrying on of the activity.
- (6) A decision not to approve the activity must:
  - (a) be notified in the *Gazette*; and
  - (b) give the reasons for the decision.

### **12M Notice of authorisation**

- (1) A notice of authorisation given under section 12F, 12J or 12L must describe the activity that is authorised.
- (2) A notice may specify that the authorisation extends to the persons who are to carry on the activity on behalf of, or under the control, of the proponent of the activity.

### **12N Variation, suspension and revocation of authorisation**

- (1) The Minister may, by notice given in accordance with section 12PA, vary an authorisation to carry on an activity given under this Part if the Minister is satisfied that it is necessary to do so to act consistently with the basic environmental principles.
- (2) If the person authorised to carry on an activity so requests in writing (giving reasons for the request) the Minister may, by notice given in accordance with section 12PA, vary the authorisation if the Minister is satisfied that:
  - (a) the reasons given justify the variation; and
  - (b) it would not be inconsistent with the basic environmental principles to vary the authorisation as requested.
- (3) The Minister may, by notice given in accordance with section 12PA, vary, suspend or revoke an authorisation to carry on an activity given under this Part if the Minister is satisfied:
  - (a) that a condition subject to which the authorisation was given has not been, or is not being, complied with; or
  - (b) it is necessary to do so to act consistently with the basic environmental principles.

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- (4) Subject to subsection (5), an authorisation remains suspended for such period (not exceeding 90 days after the day on which the suspension takes effect) as is specified in the notice of suspension.
- (5) If proceedings for an offence relating to the carrying on of an activity authorised under this Part are started during a period when the authorisation is suspended, the suspension may be continued until the proceedings (including any appeal) are completed.
- (6) A variation, suspension or revocation done at the request of the person authorised to carry on an activity takes effect:
  - (a) at the time notice of the variation, suspension or revocation is given; or
  - (b) at any later time specified in the notice.
- (7) A variation, suspension or revocation not done at the request of the person authorised to carry on an activity takes effect:
  - (a) if the Minister considers that irreversible environmental damage would be likely to occur if the variation, suspension or revocation did not take effect immediately—at the time notice of the variation, suspension or revocation is given; or
  - (b) at the start of the 14th day after the day on which notice of the variation, suspension or revocation is given or at any later time specified in the notice.
- (8) Notice of a variation, suspension or revocation given under this section must state when the variation, suspension or revocation is to take effect.
- (9) A failure to comply with subsection (8) does not invalidate a notice.

### **12P Variation etc. of conditions**

- (1) If an authorisation under this Part has been given subject to conditions specified in the notice of authorisation, the Minister may, by notice given in accordance with section 12PA, vary or revoke any of those conditions or impose further conditions.
  - (2) A variation, revocation or imposition done at the request of the person authorised to carry on an activity takes effect:
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- (a) at the time notice of the variation, revocation or imposition is given; or
  - (b) at any later time specified in the notice.
- (3) A variation, revocation or imposition not done at the request of the person authorised to carry on an activity takes effect:
- (a) if the Minister considers that irreversible environmental damage would be likely to occur if the variation, revocation or imposition did not take effect immediately—at the time notice of the variation, revocation or imposition is given; or
  - (b) at the start of the 14th day after the day on which notice of the variation, suspension or revocation is given or at any later time specified in the notice.
- (4) Notice of a variation, revocation or imposition given under this section must state when the variation, revocation or imposition is to take effect.
- (5) A failure to comply with subsection (4) does not invalidate a notice.

**12PA Method of giving notice of variations etc.**

For the purposes of subsections 12N(1), (2) and (3) and 12P(1), the method by which notice must be given is:

- (a) in writing to the proponent of the activity covered by the authorisation to which the notice relates; or
- (b) by a message transmitted by radio, telephone or other electronic means to the proponent of the activity covered by the authorisation to which the notice relates; or
- (c) by notice published in the *Gazette*.

**12Q Monitoring of activities**

The regulations may provide for the monitoring of activities authorised under this Part:

- (a) to find out whether the activities are carried on in accordance with the authorisation; or
- (b) to assess their impact on the environment.

## Part 4—Inspectors

### 13 Appointment of inspectors

The Minister may, by instrument in writing, appoint a person as an inspector.

### 14 Inspectors *ex officio*

By force of this section, any member of the Australian Federal Police or of the police force of a Territory is an inspector.

### 15 Identity cards

- (1) The Minister shall cause to be issued to each inspector, other than a member of a police force, an identity card in the form approved by the Minister, containing a photograph of the holder.
- (2) A person who ceases to be an inspector shall forthwith return his or her identity card to the Minister.
- (3) A person who contravenes subsection (2) is guilty of an offence punishable on conviction by a fine not exceeding 1 penalty unit.

### 16 Arrest without warrant

- (1) An inspector may, without warrant, arrest any person if the inspector reasonably believes:
  - (a) that the person has committed, or is committing, an offence against this Act; and
  - (b) that proceedings against the person by summons would not be effective.
- (2) Where an inspector (other than a member of a police force who is in uniform) arrests a person under subsection (1), he or she shall:
  - (a) in the case of a member of a police force—produce, for inspection by that person, written evidence of the fact that he or she is a member of a police force; or

- (b) in any other case—produce his or her identity card for inspection by that person.
- (3) Where a person is arrested under subsection (1), an inspector shall forthwith bring the person, or cause him or her to be brought, before a Justice of the Peace or other proper authority to be dealt with in accordance with law.
- (4) Nothing in this section prevents the arrest of a person in accordance with any other law.

### **17 General powers of inspectors**

- (1) Subject to subsection (2), an inspector may search a vehicle, sled, aircraft or vessel if he or she believes on reasonable grounds that there is in or on that vehicle, sled, aircraft or vessel:
  - (a) any animal, plant, virus, bacterium, yeast, fungus or article in respect of which an offence against this Act has been committed; or
  - (b) anything that will afford evidence as to the contravention of a civil penalty provision or the commission of an offence against this Act;and for that purpose stop or detain that vehicle, sled, aircraft or vessel.
- (2) Subject to subsection (3), an inspector shall not search:
  - (a) an aircraft or vessel belonging to an arm of the Defence Force; or
  - (b) a foreign aircraft or foreign vessel;unless permission to do so is given by the person for the time being in control of the aircraft or vessel and, if that person so requires, personnel of an arm of the Defence Force or of the foreign aircraft or foreign vessel, as the case may be, are present to supervise the search.
- (3) Subsection (2) does not apply in relation to a foreign aircraft or foreign vessel (not being an aircraft or vessel of war) while it is in the Territory.
- (4) An inspector may:

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- (a) require any person whom he or she finds committing or whom he or she reasonably suspects of having committed an offence against this Act to state his or her full name and usual place of residence; and
  - (aa) require any person whom he or she finds contravening, or whom he or she reasonably suspects of having contravened, a civil penalty provision to state his or her full name and usual place of residence; and
  - (b) require any person whom he or she finds doing or whom he or she reasonably suspects of having done an act in respect of which the person is required to hold a permit to produce such a permit or evidence of the existence and contents of such a permit; and
  - (c) require any person whom he or she finds doing, or whom he or she reasonably suspects of having done, an activity in respect of which the person is required to be authorised under Part 3 to produce such an authorisation or evidence of the existence and content of such an authorisation.
- (5) Where an inspector (other than a member of a police force who is in uniform) stops, or proposes to search or detain, a vehicle, sled, aircraft or vessel, he or she shall:
- (a) in the case of a member of a police force—produce, for inspection by the person in charge of that vehicle, sled, aircraft or vessel, written evidence of the fact that he or she is a member of a police force; or
  - (b) in any other case—produce his or her identity card for inspection by that person;
- and, if he or she fails to do so, he or she is not authorized to search or detain that vehicle, sled, aircraft or vessel.
- (6) Where an inspector (other than a member of a police force who is in uniform) makes a requirement of a person under this section, he or she shall:
- (a) in the case of a member of a police force—produce, for inspection by that person, written evidence of the fact that he or she is a member of a police force; or

(b) in any other case—produce his or her identity card for inspection by that person;  
and, if he or she fails to do so, that person is not obliged to comply with the requirement.

- (7) A person commits an offence if:
- (a) an inspector makes a requirement of the person under this section; and
  - (b) the person fails to comply with the requirement.

Penalty: 10 penalty units.

- (7A) An offence under subsection (7) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (8) For the purposes of paragraph (4)(b), *permit* includes a recognised foreign authority.

## 18 Seizure

- (1) An inspector may seize any article that he or she reasonably believes to have been involved in the contravention of a civil penalty provision or the commission of an offence against this Act and may retain the article:
- (a) if proceedings for:
    - (i) an offence against this Act in the commission of which it may have been involved; or
    - (ii) a contravention of a civil penalty provision in the contravention of which it may have been involved;  
are commenced within 60 days after it is seized—until the proceedings (including any appeal) are completed; or
  - (b) otherwise—for up to 60 days.
- (2) An inspector may seize any animal, plant, virus, bacterium, yeast or fungus that he or she reasonably believes to have been involved in the commission of an offence against this Act.
- (3) Where anything has been seized under subsection (2), the Minister may cause it to be retained or disposed of and, if it was not involved in the commission of an offence against this Act, any

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person who has suffered loss or damage by reason of the seizure is entitled to reasonable compensation.



**Part 5—Offences relating to the environment etc.****19 Offences relating to the environment**

- (1A) A person is guilty of an offence if:
- (a) the person does an act; and
  - (b) the action:
    - (i) causes death or injury to a native bird, a native invertebrate or a native seal in the Antarctic; or
    - (ii) causes the taking of a native bird, a native invertebrate or a native seal in the Antarctic; or
    - (iii) causes other interference with a native bird, a native invertebrate or a native seal in the Antarctic; or
    - (iiia) disturbs a native bird or native seal; or
    - (iv) causes injury to or other interference with a native plant in the Antarctic.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (1) A person shall not:
- (b) gather, or collect a native plant in the Antarctic; or
  - (c) bring into, or keep in, the Antarctic an animal, plant, virus, bacterium, yeast or fungus that is not indigenous to the Antarctic; or
  - (caa) bring a dog into the Antarctic or, being the owner of a dog, allow it to remain in the Antarctic; or
  - (ca) bring into, or keep in, the Antarctic:
    - (i) non-sterile soil; or
    - (ii) polychlorinated biphenyls; or
    - (iii) polystyrene beads or chips or any similar kind of packaging material; or
  - (cb) bring into, or keep in, the Antarctic any pesticide; or
  - (d) enter, or carry on any other activity in, an Antarctic specially protected area; or

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- (e) carry on any activity in an Antarctic specially managed area otherwise than as authorised by the plan of management relating to the area.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

(1B) A person is guilty of an offence if:

- (a) the person does an act; and
- (b) the action:
  - (i) causes any damage to or in an historic site; or
  - (ii) destroys, or causes damage to or the removal of, an historic monument.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

(2) A person shall not, in the Antarctic:

- (a) use an aircraft in such a manner as to disturb a concentration of birds or of seals; or
- (b) use a vehicle or vessel in a manner that disturbs a concentration of birds or of seals; or
- (c) use an explosive in a manner that disturbs a concentration of birds or of seals; or
- (d) use a firearm in a manner that disturbs a concentration of birds or of seals; or
- (e) while on foot, disturb a concentration of birds or of seals; or
- (ea) carry on any activity that results in:
  - (i) the habitat of any species of native seal, native bird, native invertebrate or native plant; or
  - (ii) any population of native seals, native birds, native invertebrates or native plants; being adversely modified to a significant extent; or
- (g) cause or permit to escape from his or her control or the control of any other person an animal, plant, virus, bacterium, yeast or fungus that is not indigenous to the Antarctic and has been brought into the Antarctic by virtue of a permit or to be used as food.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

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- (3) This section does not apply in relation to any action if:
- (a) the action was done in an emergency:
    - (i) to save a person from death or serious injury; or
    - (ii) to secure the safety of a ship or aircraft or the safety of equipment or facilities of high value; or
    - (iii) to protect the environment; or
  - (b) in the case of action of a kind referred to in paragraph (1)(c)—the animal (not being a live bird), plant, virus, bacterium, yeast or fungus, as the case may be, was brought into the Antarctic to be used as food; or
  - (ba) in the case of action of a kind referred to in paragraph (1)(cb)—the pesticide is to be used for scientific, medical or hygienic purposes; or
  - (c) the action in question was done in accordance with a permit or a recognised foreign authority; or
  - (d) in the case of action of a kind referred to in paragraph (2)(a), (2)(b), (2)(c) or (2)(e)—the action in question was reasonably necessary for the construction or operation of a scientific support facility.
- (4) In this section:
- concentration:**
- (a) of birds, means a group of more than 20 birds; or
  - (b) of seals, means a group of more than 20 seals.

**19AA Offences relating to rocks and meteorites**

- (1) A person commits an offence if:
- (a) the person gathers or collects a meteorite; and
  - (b) the person does so in the Antarctic; and
  - (c) the person does not gather or collect the meteorite in accordance with a permit.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (2) A person commits an offence if:
- (a) the person removes a rock or a meteorite from the Antarctic; and

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- (b) the rock or meteorite was gathered or collected in the Antarctic (whether or not by the person); and
- (c) the person does not remove the rock or meteorite in accordance with a permit.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

### **19AB Offence relating to return of indigenous species**

A person commits an offence if:

- (a) the person brings into the Antarctic a seal, bird or plant; and
- (b) the seal, bird or plant is a native seal, a native bird or a native plant; and
- (c) the person does not bring the seal, bird or plant into the Antarctic in accordance with a permit.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

### **19A Prohibition against mining in the Territory**

- (1) A person must not engage in a mining activity:
  - (a) in the Territory; or
  - (b) on any part of:
    - (i) the continental shelf of the Territory; or
    - (ii) the continental shelf of any of the islands known as Heard Island and McDonald Islands;that is within the Antarctic.

Penalty: Imprisonment for 16 years or 1,000 penalty units, or both.

- (2) Subsection (1) does not apply to a mining activity if the activity is the gathering or collecting of a meteorite, or the removal of a rock or meteorite, in accordance with a permit.

Note: The defendant bears an evidential burden in relation to the matters in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

**19B Prohibition against mining in the Antarctic**

- (1) An Australian national must not engage in a mining activity in or on an area of the Antarctic other than:
  - (a) the Territory; or
  - (b) any area of continental shelf referred to in paragraph 19A(1)(b).

Penalty: Imprisonment for 16 years or 1,000 penalty units, or both.

- (2) Subsection (1) does not apply to a mining activity if the activity is the gathering or collecting of a meteorite, or the removal of a rock or meteorite, in accordance with a permit.

Note: The defendant bears an evidential burden in relation to the matters in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

**19C Prosecution of offences**

- (1) An offence against section 19A or 19B is an indictable offence.
- (2) Despite subsection (1), a court of summary jurisdiction, may hear and determine proceedings in respect of an offence against section 19A or 19B if satisfied that it is proper to do so and the defendant and the prosecutor consent.
- (3) If, under subsection (2), a court of summary jurisdiction convicts a person of an offence against section 19A or 19B, the penalty that the court may impose is a fine not exceeding:
  - (a) in the case of an individual—100 penalty units; or
  - (b) in the case of a body corporate—500 penalty units.

**20 Contravening conditions of permits**

- (1) A person is guilty of an offence if:
    - (a) a provision of a condition of a permit is applicable to the person (including a provision of a condition that is applicable to the person because of subsection 9A(3)); and
    - (b) the person engages in conduct; and
    - (c) the conduct contravenes the condition.
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## Section 21

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Penalty: Imprisonment for 1 year or 60 penalty units, or both.

(2) In this section:

***engage in conduct*** means:

- (a) do an act; or
- (b) omit to perform an act.

### 21 Furnishing information

(1) A person who does an act mentioned in subsection (1AA) in accordance with a permit must notify the Minister or an authorised officer, in the prescribed form (or, if no form is prescribed, in a form approved by the Minister), that the person has done the act, as soon as practicable after doing the act.

Penalty: 60 penalty units.

(1AA) The acts that must be notified under subsection (1) are the following:

- (a) an act that has a result mentioned in paragraph 19(1A)(b);
- (b) an act mentioned in paragraph 19(1)(b);
- (c) an act mentioned in paragraph 19(1)(d).

(1A) An offence under subsection (1) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(2) In subsection (1), ***authorised officer*** means a person designated by the Minister, by notice published in the *Gazette*, for the purposes of that subsection.

### 21AA Giving information about act done in emergency situation

(1) A person who, in an emergency:

- (a) to save a person from death or serious injury; or
- (b) to secure the safety of a ship or aircraft or the safety of equipment or facilities of high value; or
- (c) to protect the environment;

does an act mentioned in subsection (2), and does so other than in accordance with a permit or a recognised foreign authority, must

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**Section 21AB**

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notify the Minister or an authorised officer that the person has done the act, before the end of the 30th day after the act was done.

Penalty: 60 penalty units.

- (2) The acts that must be notified under subsection (1) are the following:
- (a) an act that has a result mentioned in paragraph 19(1A)(b);
  - (b) an act mentioned in subsection 19(1);
  - (c) an act mentioned in subsection 19(2).
- (3) Subsection (1) does not apply if:
- (a) it is not possible for the person to notify the Minister or an authorised officer of the act before the end of the 30th day after the act was done; and
  - (b) the person notifies the Minister or an authorised officer of the act as soon as practicable after that day.

Note: The defendant bears an evidential burden in relation to the matters in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

- (4) Strict liability applies to subsection (1).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (5) In this section:

***authorised officer*** means a person authorised by the Minister, by notice published in the *Gazette*, for the purposes of this section.

### **21AB Giving further information about act done in emergency situation**

- (1) A person who, in an emergency:
- (a) to save a person from death or serious injury; or
  - (b) to secure the safety of a ship or aircraft or the safety of equipment or facilities of high value; or
  - (c) to protect the environment;
- does an act mentioned in subsection 21A(2), and does so other than in accordance with a permit or a recognised foreign authority, must, before the end of the 60th day after the day on which the act

## Section 21A

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was done, give a written report to the Minister or an authorised officer, in the prescribed form (or if no form is prescribed, in the form approved by the Minister):

- (d) describing the action; and
- (e) explaining why the action was taken.

Penalty: 60 penalty units.

- (2) Subsection (1) does not apply if:
  - (a) it is not possible for the person to give the written report to the Minister or an authorised officer before the end of the 60th day after the act was done; and
  - (b) the person gives the written report to the Minister or an authorised officer as soon as practicable after that day.

Note: The defendant bears an evidential burden in relation to the matters in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

- (3) Strict liability applies to subsection (1).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4) In this section:

***authorised officer*** means a person authorised by the Minister, by notice published in the *Gazette*, for the purposes of this section.

### 21A Unauthorised activities

- (1) In this section:

***activity*** means an activity to which Part 3 applies.

- (2) A person commits an offence if:
  - (a) the person carries on an activity; and
  - (b) the person does so in the Antarctic; and
  - (c) the person is not authorised by the Minister under Part 3 to carry on the activity.

Penalty: Imprisonment for 7 years or 420 penalty units, or both.

- (3) A person commits an offence if:



Section 21A

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- (a) the Minister authorised the person under Part 3 to carry on an activity in the Antarctic subject to a condition being complied with; and
- (b) the person carries on the activity; and
- (c) the person does so without the condition being complied with.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (4) In a prosecution of a person for an offence against subsection (2) or (3), it is a defence if:
- (a) the activity was carried on in an emergency:
    - (i) to save a person from death or serious injury; or
    - (ii) to secure the safety of a ship or aircraft or the safety of equipment or facilities of high value; or
    - (iii) to protect the environment; or
  - (b) the person was authorised to carry on the activity under a law of a Contracting Party.

Note: The defendant bears an evidential burden in relation to the matters in subsection (4). See subsection 13.3(3) of the *Criminal Code*.

## **Part 5A—Civil penalty provisions**

### **Division 1—Obtaining a civil penalty order**

#### **22 Civil penalty orders**

##### *Application for order*

- (1) The Minister may apply to a Court for an order that a person, who is alleged to have contravened a civil penalty provision, pay the Commonwealth a pecuniary penalty.
- (2) The Minister must make the application within 6 years of the alleged contravention.

##### *Court may order person to pay pecuniary penalty*

- (3) If the Court is satisfied that the person has contravened the civil penalty provision, the Court may order the person to pay to the Commonwealth such pecuniary penalty for the contravention as the Court determines to be appropriate.

Note: Subsection (5) sets out the maximum penalty that the Court may order the person to pay.

- (4) An order under subsection (3) is a ***civil penalty order***.

##### *Determining pecuniary penalty*

- (5) The pecuniary penalty must not be more than:
  - (a) if the person is a body corporate—5 times the pecuniary penalty specified for the civil penalty provision; and
  - (b) otherwise—the pecuniary penalty specified for the civil penalty provision.
- (6) In determining the pecuniary penalty, the Court must take into account all relevant matters, including:
  - (a) the nature and extent of the contravention; and
  - (b) the nature and extent of any loss or damage suffered because of the contravention; and

- (c) the circumstances in which the contravention took place; and
- (d) whether the person has previously been found by a court to have engaged in any similar conduct.

### **22A Civil enforcement of penalty**

- (1) A pecuniary penalty is a debt payable to the Commonwealth.
- (2) The Commonwealth may enforce a civil penalty order as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgement debt.

### **22B Conduct contravening more than one civil penalty provision**

- (1) If conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this Part against a person in relation to the contravention of any one or more of those provisions.
- (2) However, the person is not liable to more than one pecuniary penalty under this Part in relation to the same conduct.

### **22C Multiple contraventions**

- (1) A Court may make a single civil penalty order against a person for multiple contraventions of a civil penalty provision if proceedings for the contraventions are founded on the same facts, or if the contraventions form, or are part of, a series of contraventions of the same or a similar character.
- (2) However, the penalty must not exceed the sum of the maximum penalties that could be ordered if a separate penalty were ordered for each of the contraventions.

### **22D Proceedings may be heard together**

A Court may direct that 2 or more proceedings for civil penalty orders are to be heard together.

**Part 5A** Civil penalty provisions

**Division 1** Obtaining a civil penalty order

Section 22E

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**22E Civil evidence and procedure rules for civil penalty orders**

A Court must apply the rules of evidence and procedure for civil matters when hearing proceedings for a civil penalty order.

**22F Contravening a civil penalty provision is not an offence**

A contravention of a civil penalty provision is not an offence.

## **Division 2—Civil proceedings and criminal proceedings**

### **22G Civil proceedings after criminal proceedings**

A Court may not make a civil penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is the same, or substantially the same, as the conduct constituting the contravention.

### **22H Criminal proceedings during civil proceedings**

- (1) Proceedings for a civil penalty order against a person for a contravention of a civil penalty provision are stayed if:
  - (a) criminal proceedings are commenced or have already been commenced against the person for an offence; and
  - (b) the offence is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention.
- (2) The proceedings for the order (the *civil proceedings*) may be resumed if the person is not convicted of the offence. Otherwise:
  - (a) the civil proceedings are dismissed; and
  - (b) costs must not be awarded in relation to the civil proceedings.

### **22J Criminal proceedings after civil proceedings**

Criminal proceedings may be commenced against a person for conduct that is the same, or substantially the same, as conduct that would constitute a contravention of a civil penalty provision regardless of whether a civil penalty order has been made against the person in relation to the contravention.

**22K Evidence given in civil proceedings not admissible in criminal proceedings**

- (1) Evidence of information given, or evidence of production of documents by an individual, is not admissible in criminal proceedings against the individual if:
  - (a) the individual previously gave the evidence or produced the documents in proceedings for a civil penalty order against the individual for an alleged contravention of a civil penalty provision (whether or not the order was made); and
  - (b) the conduct alleged to constitute the offence is the same, or substantially the same, as the conduct alleged to constitute the contravention.
- (2) However, subsection (1) does not apply to criminal proceedings in relation to the falsity of the evidence given by the individual in the proceedings for the civil penalty order.

## **Division 3—Miscellaneous**

### **22L Ancillary contravention of civil penalty provisions**

- (1) A person must not:
- (a) attempt to contravene a civil penalty provision; or
  - (b) aid, abet, counsel or procure a contravention of a civil penalty provision; or
  - (c) induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or
  - (d) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of a civil penalty provision; or
  - (e) conspire with others to effect a contravention of a civil penalty provision.

Note: Section 22N (which provides that a person's state of mind does not need to be proven in relation to a civil penalty provision) does not apply to subsection (1) of this section.

#### *Civil penalty*

- (2) A person who contravenes subsection (1) in relation to a civil penalty provision is taken to have contravened the provision.

### **22M Mistake of fact**

- (1) A person is not liable to have a civil penalty order made against the person for a contravention of a civil penalty provision if:
- (a) at or before the time of the conduct constituting the contravention, the person:
    - (i) considered whether or not facts existed; and
    - (ii) was under a mistaken but reasonable belief about those facts; and
  - (b) had those facts existed, the conduct would not have constituted a contravention of the civil penalty provision.
- (2) For the purposes of subsection (1), a person may be regarded as having considered whether or not facts existed if:

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- (a) the person had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and
  - (b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.
- (3) A person who wishes to rely on subsection (1) or (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matters in that subsection.

**22N State of mind**

- (1) In proceedings for a civil penalty order against a person for a contravention of a civil penalty provision (other than subsection 22L(1)), it is not necessary to prove:
- (a) the person's intention; or
  - (b) the person's knowledge; or
  - (c) the person's recklessness; or
  - (d) the person's negligence; or
  - (e) any other state of mind of the person.
- (2) Subsection (1) does not affect the operation of section 22M (which is about mistake of fact).



## **Part 6—Miscellaneous**

### **25 Officers and employees of governments and authorities**

The Governor-General may make arrangements with the Governor of a State or the Administrator of the Northern Territory for the performance of functions and the exercise of powers under this Act by officers or employees of that State or Territory or of an authority of that State or Territory, as the case may be.

### **26 Programs etc. relating to the Antarctic**

The Minister may cause, make arrangements for, or co-operate with any government, organization or person in:

- (a) the formulation and implementation of programs;
- (b) the carrying out of research; and
- (c) the dissemination of information;

relating to the conservation of Antarctic fauna and flora and the protection of the environment of the Antarctic.

### **27 Delegation**

The Minister may delegate to an officer of, or a person employed in, the Department all or any of his or her functions and powers under this Act other than:

- (a) a function under section 12L; or
- (b) the power under section 12N to vary, suspend or revoke an authorisation given under section 12L; or
- (c) the power under section 12P to vary or revoke any condition to which an authorisation given under section 12L is subject; or
- (d) the power under section 22 to apply for a civil penalty order.

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## 28 Review of decisions

- (1) An application may be made to the Administrative Appeals Tribunal for a review of a decision of the Minister made under section 9, 10, 11, 12, 12E, 12F, 12H, 12J, 12L, 12N or 12P.
- (1A) The Administrative Appeals Tribunal must not make an order under subsection 41(2) of the *Administrative Appeals Tribunal Act 1975* staying, or otherwise affecting the operation or implementation, of:
  - (a) a decision under subsection 12N(1) or (3) to which paragraph 12N(7)(a) applies; or
  - (b) a decision under subsection 12P(1) to which paragraph 12P(3)(a) applies.
- (2) In this section, **decision** has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

## 29 Regulations

- (1) The Governor-General may make regulations:
  - (a) not inconsistent with this Act, prescribing matters:
    - (i) required or permitted by this Act to be prescribed; or
    - (ii) necessary or convenient to be prescribed for carrying out or giving effect to this Act; or
  - (c) providing for the procedures to be followed in dealing with a comprehensive environmental evaluation received from a party to the Madrid Protocol in relation to an activity proposed to be carried on by the party in the Antarctic; or
  - (d) providing for:
    - (i) the management and disposal of waste in the Antarctic; or
    - (ii) the removal of waste from the Antarctic.
- (2) Without limiting the generality of subsection (1), regulations may be made:
  - (a) providing for functions and powers to be conferred, and duties to be imposed, upon inspectors; and

- (ab) providing for the payment of a fee in the amount, or at the rate, fixed by or calculated under the regulations in respect of:
    - (i) the processing of an application for a permit; or
    - (ii) the grant of a permit; or
    - (iii) the processing of a preliminary assessment, an initial environmental evaluation or a comprehensive environmental evaluation under Part 3; or
    - (iv) the authorisation of an activity under Part 3; and
  - (ac) providing for the refund of a fee referred to in paragraph (ab); and
  - (b) providing for the conservation of Antarctic fauna and flora and the protection of the environment of the Antarctic; and
  - (c) regulating or prohibiting the pollution of soil, air, water or ice where such pollution is, or is likely to be, harmful to the fauna, flora and environment of the Antarctic; and
  - (d) regulating the conduct of persons in an Antarctic specially protected area or an Antarctic specially managed area; and
  - (f) regulating or prohibiting the taking of animals, plants, viruses, bacteria, yeasts and fungi into, or out of, the Antarctic; and
  - (g) providing for the control and destruction in the Antarctic of animals, plants, viruses, bacteria, yeasts and fungi that are not indigenous to the Antarctic; and
  - (h) providing for the prevention of the introduction of diseases and parasites into the Antarctic; and
  - (i) providing for the collection of specimens and the pursuit of research in the Antarctic for scientific purposes; and
  - (j) regulating or prohibiting, for purposes related to the conservation of Antarctic fauna and flora and the protection of the environment of the Antarctic, the use of vehicles, sleds and vessels in, and the landing and use of aircraft in and the flying of aircraft over, specified areas of the Antarctic; and
  - (k) providing for any matter incidental to or connected with any of the foregoing.
- (2A) A fee under subsection (2) must not be such as to amount to taxation.
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- (3) The power to make regulations conferred by this Act may be exercised:
  - (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of case; and
  - (b) so as to make, as respects the cases in relation to which it is exercised, the same provision for all those cases or different provision for different cases or classes of case.
- (4) The power to make regulations conferred by this Act shall not be taken, by implication, to exclude the power to make provision for or in relation to a matter by reason only of the fact that:
  - (a) a provision is made by this Act in relation to that matter or another matter; or
  - (b) power is expressly conferred by this Act to make provision by regulation for or in relation to another matter.
- (5) The regulations may prescribe penalties, not exceeding 50 penalty units, for offences against the regulations.
- (6) The limitation imposed by subsection (5) on the penalties that may be prescribed by the regulations does not prevent the regulations from requiring a person to make a statutory declaration.

## **Schedule 1—Convention for the Conservation of Antarctic Seals**

Subsection 3(1)

The Contracting Parties.

*Recalling* the Agreed Measures for the Conservation of Antarctic Fauna and Flora, adopted under the Antarctic Treaty signed at Washington on 1 December 1959;

*Recognizing* the general concern about the vulnerability of Antarctic seals to commercial exploitation and the consequent need for effective conservation measures;

*Recognizing* that the stocks of Antarctic seals are an important living resource in the marine environment which requires an international agreement for its effective conservation;

*Recognizing* that this resource should not be depleted by over-exploitation, and hence that any harvesting should be regulated so as not to exceed the levels of the optimum sustainable yield;

*Recognizing* that in order to improve scientific knowledge and so place exploitation on a rational basis, every effort should be made both to encourage biological and other research on Antarctic seal populations and to gain information from such research and from the statistics of future sealing operations, so that further suitable regulations may be formulated;

*Noting* that the Scientific Committee on Antarctic Research of the International Council of Scientific Unions (SCAR) is willing to carry out the tasks requested of it in this Convention;

*Desiring* to promote and achieve the objectives of protection, scientific study and rational use of Antarctic seals, and to maintain a satisfactory balance within the ecological system,

Have agreed as follows:

## ARTICLE 1

### Scope

(1) This Convention applies to the seas south of 60° South Latitude, in respect of which the Contracting Parties affirm the provisions of Article IV of the Antarctic Treaty.

(2) This Convention may be applicable to any or all of the following species:

Southern elephant seal *Mirounga leonina*,

Leopard seal *Hydrurga leptonyx*,

Weddell seal *Leptonychotes weddelli*,

Crabeater seal *Lobodon carcinophagus*,

Ross seal *Ommatophoca rossi*,

Southern fur seals *Arctocephalus* sp.

(3) The Annex to this Convention forms an integral part thereof.

## ARTICLE 2

### Implementation

(1) The Contracting Parties agree that the species of seals enumerated in Article 1 shall not be killed or captured within the Convention area by their nationals or vessels under their respective flags except in accordance with the provisions of this Convention.

(2) Each Contracting Party shall adopt for its nationals and for vessels under its flag such laws, regulations and other measures, including a permit system as appropriate, as may be necessary to implement this Convention.

## ARTICLE 3

### Annexed Measures

(1) This Convention includes an Annex specifying measures which the Contracting Parties hereby adopt. Contracting Parties may from time to time in the future adopt other measures with respect to the conservation, scientific study and rational and humane use of seal resources, prescribing *inter alia*:

- (a) permissible catch;
- (b) protected and unprotected species;
- (c) open and closed seasons;

- (d) open and closed areas, including the designation of reserves;
- (e) the designation of special areas where there shall be no disturbance of seals;
- (f) limits relating to sex, size, or age for each species;
- (g) restrictions relating to time of day and duration, limitations of effort and methods of sealing;
- (h) types and specifications of gear and apparatus and appliances which may be used;
- (i) catch returns and other statistical and biological records;
- (j) procedures for facilitating the review and assessment of scientific information;
- (k) other regulatory measures including an effective system of inspection.

(2) The measures adopted under paragraph (1) of this Article shall be based upon the best scientific and technical evidence available.

(3) The Annex may from time to time be amended in accordance with the procedures provided for in Article 9.

#### ARTICLE 4

##### **Special Permits**

(1) Notwithstanding the provisions of this Convention, any Contracting Party may issue permits to kill or capture seals in limited quantities and in conformity with the objectives and principles of this Convention for the following purposes:

- (a) to provide indispensable food for men or dogs;
- (b) to provide for scientific research; or
- (c) to provide specimens for museums, educational or cultural institutions.

(2) Each Contracting Party shall, as soon as possible, inform the other Contracting Parties and SCAR of the purpose and content of all permits issued under paragraph (1) of this Article and subsequently of the numbers of seals killed or captured under these permits.

ARTICLE 5

**Exchange of Information and Scientific Advice**

(1) Each Contracting Party shall provide to the other Contracting Parties and to SCAR the information specified in the Annex within the period indicated therein.

(2) Each Contracting Party shall also provide to the other Contracting Parties and to SCAR before 31 October each year information on any steps it has taken in accordance with Article 2 of this Convention during the preceding period 1 July to 30 June.

(3) Contracting Parties which have no information to report under the two preceding paragraphs shall indicate this formally before 31 October each year.

(4) SCAR is invited:

(a) to assess information received pursuant to this Article; encourage exchange of scientific data and information among the Contracting Parties; recommend programmes for scientific research; recommend statistical and biological data to be collected by sealing expeditions within the Convention area; and suggest amendments to the Annex; and

(b) to report on the basis of the statistical, biological and other evidence available when the harvest of any species of seal in the Convention area is having a significantly harmful effect on the total stocks of such species or on the ecological system in any particular locality.

(5) SCAR is invited to notify the Depositary which shall report to the Contracting Parties when SCAR estimates in any sealing season that the permissible catch limits for any species are likely to be exceeded and, in that case, to provide an estimate of the date upon which the permissible catch limits will be reached. Each Contracting Party shall then take appropriate measures to prevent its nationals and vessels under its flag from killing or capturing seals of that species after the estimated date until the Contracting Parties decide otherwise.

(6) SCAR may if necessary seek the technical assistance of the Food and Agriculture Organization of the United Nations in making its assessments.

(7) Notwithstanding the provisions of paragraph (1) of Article 1 the Contracting Parties shall, in accordance with their internal law, report to each other and to SCAR, for consideration, statistics relating to the Antarctic seals listed in paragraph (2) of Article 1 which have been killed or captured by their



nationals and vessels under their respective flags in the area of floating sea ice north of 60° South Latitude.

## ARTICLE 6

### **Consultations between Contracting Parties**

(1) At any time after commercial sealing has begun a Contracting Party may propose through the Depositary that a meeting of Contracting Parties be convened with a view to:

- (a) establishing by a two-thirds majority of the Contracting Parties, including the concurring votes of all States signatory to this Convention present at the meeting, an effective system of control, including inspection, over the implementation of the provisions of this Convention;
- (b) establishing a commission to perform such functions under this Convention as the Contracting Parties may deem necessary; or
- (c) considering other proposals, including:
  - (i) the provision of independent scientific advice;
  - (ii) the establishment, by a two-thirds majority, of a scientific advisory committee which may be assigned some or all of the functions requested of SCAR under this Convention, if commercial sealing reaches significant proportions;
  - (iii) the carrying out of scientific programmes with the participation of the Contracting Parties; and
  - (iv) the provision of further regulatory measures, including moratoria.

(2) If one-third of the Contracting Parties indicate agreement the Depositary shall convene such a meeting, as soon as possible.

(3) A meeting shall be held at the request of any Contracting Party, if SCAR reports that the harvest of any species of Antarctic seal in the area to which this Convention applies is having a significantly harmful effect on the total stocks or the ecological system in any particular locality.

## ARTICLE 7

### **Review of Operations**

The Contracting Parties shall meet within five years after the entry into force of this Convention and at least every five years thereafter to review the operation of the Convention.

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ARTICLE 8

**Amendments to the Convention**

(1) This Convention may be amended at any time. The text of any amendment proposed by a Contracting Party shall be submitted to the Depositary, which shall transmit it to all the Contracting Parties.

(2) If one-third of the Contracting Parties request a meeting to discuss the proposed amendment the Depositary shall call such a meeting.

(3) An amendment shall enter into force when the Depositary has received instruments of ratification or acceptance thereof from all the Contracting Parties.

ARTICLE 9

**Amendments to the Annex**

(1) Any Contracting Party may propose amendments to the Annex to this Convention. The text of any such proposed amendment shall be submitted to the Depositary which shall transmit it to all Contracting Parties.

(2) Each such proposed amendment shall become effective for all Contracting Parties six months after the date appearing on the notification from the Depositary to the Contracting Parties, if within 120 days of the notification date, no objection has been received and two-thirds of the Contracting Parties have notified the Depositary in writing of their approval.

(3) If an objection is received from any Contracting Party within 120 days of the notification date, the matter shall be considered by the Contracting Parties at their next meeting. If unanimity on the matter is not reached at the meeting, the Contracting Parties shall notify the Depositary within 120 days from the date of closure of the meeting of their approval or rejection of the original amendment or of any new amendment proposed by the meeting. If, by the end of this period, two-thirds of the Contracting Parties have approved such amendment, it shall become effective six months from the date of the closure of the meeting for those Contracting Parties which have by then notified their approval.

(4) Any Contracting Party which has objected to a proposed amendment may at any time withdraw that objection, and the proposed amendment shall become effective with respect to such Party immediately if the amendment is

already in effect, or at such time as it becomes effective under the terms of this Article.

(5) The Depositary shall notify each Contracting Party immediately upon receipt of each approval or objection, of each withdrawal of objection, and of the entry into force of any amendment.

(6) Any State which becomes a party to this Convention after an amendment to the Annex has entered into force shall be bound by the Annex as so amended. Any State which becomes a Party to this Convention during the period when a proposed amendment is pending may approve or object to such an amendment within the time limits applicable to other Contracting Parties.

#### ARTICLE 10

##### **Signature**

This Convention shall be open for signature at London from 1 June to 31 December 1972 by States participating in the Conference on the Conservation of Antarctic Seals held at London from 3 to 11 February 1972.

#### ARTICLE II

##### **Ratification**

This Convention is subject to ratification or acceptance. Instruments of ratification or acceptance shall be deposited with the Government of the United Kingdom of Great Britain and Northern Ireland, hereby designated as the Depositary.

#### ARTICLE 12

##### **Accession**

This Convention shall be open for accession by any State which may be invited to accede to this Convention with the consent of all the Contracting Parties.

#### ARTICLE 13

##### **Entry into Force**

(1) This Convention shall enter into force on the thirtieth day following the date of deposit of the seventh instrument of ratification or acceptance.

(2) Thereafter this Convention shall enter into force for each ratifying, accepting or acceding State on the thirtieth day after deposit by such State of its instrument of ratification, acceptance or accession.

ARTICLE 14

**Withdrawal**

Any Contracting Party may withdraw from this Convention on 30 June of any year by giving notice on or before 1 January of the same year to the Depositary, which upon receipt of such a notice shall at once communicate it to the other Contracting Parties. Any other Contracting Party may, in like manner, within one month of the receipt of a copy of such a notice from the Depositary, give notice of withdrawal, so that the Convention shall cease to be in force on 30 June of the same year with respect to the Contracting Party giving such notice.

ARTICLE 15

**Notifications by the Depositary**

The Depositary shall notify all signatory and acceding States of the following:

- (a) signatures of this Convention, the deposit of instruments of ratification, acceptance or accession and notices of withdrawal;
- (b) the date of entry into force of this Convention and of any amendments to it or its Annex.

ARTICLE 16

**Certified Copies and Registration**

(1) This Convention, done in the English, French, Russian and Spanish languages, each version being equally authentic, shall be deposited in the archives of the Government of the United Kingdom of Great Britain and Northern Ireland, which shall transmit duly certified copies thereof to all signatory and acceding States.

(2) This Convention shall be registered by the Depositary pursuant to Article 102 of the Charter of the United Nations.

IN WITNESS WHEREOF, the undersigned, duly authorized, have signed this Convention.

DONE at London, this 1st day of June 1972.

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 ANNEX

 1. *Permissible Catch*

The Contracting Parties shall in any one year, which shall run from 1 July to 30 June inclusive, restrict the total number of seals of each species killed or captured to the numbers specified below. These numbers are subject to review in the light of scientific assessments:

- (a) in the case of crabeater seals *Lobodon carcinophagus*, 175,000;
- (b) in the case of Leopard seals *Hydrurgo leptonyx*, 12,000;
- (c) in the case of Weddell seals *Leptonychotes weddelli*, 5,000.

 2. *Protected Species*

- (a) It is forbidden to kill or capture Ross seals *Ommatophoca rossi*, Southern elephant seals *Mirounga leonina*, or fur seals of the genus *Arctocephalus*.
- (b) In order to protect the adult breeding stock during the period when it is most concentrated and vulnerable, it is forbidden to kill or capture any Weddell seal *Leptonychotes weddelli* one year old or older between 1 September and 31 January inclusive.

 3. *Closed Season and Sealing Season*

The period between 1 March and 31 August inclusive is a Closed Season, during which the killing or capturing of seals is forbidden. The period 1 September to the last day in February constitutes a Sealing Season.

 4. *Sealing Zones*

Each of the sealing zones listed in this paragraph shall be closed in numerical sequence to all sealing operations for the seal species listed in paragraph 1 of this Annex for the period 1 September to the last day of February inclusive. Such closures shall begin with the same zone as is closed under paragraph 2 of Annex B to Annex I of the Report of the Fifth Antarctic Treaty Consultative Meeting at the moment the Convention enters into force. Upon the expiration of each closed period, the affected zone shall reopen:

- Zone 1—between 60° and 120° West Longitude
  - Zone 2—between 0° and 60° West Longitude, together with that part of the Weddell Sea lying westward of 60° West Longitude
  - Zone 3—between 0° and 70° East Longitude
  - Zone 4—between 70° and 130° East Longitude
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Zone 5—between 130° East Longitude and 170° West Longitude

Zone 6—between 120° and 170° West Longitude.

5. *Seal Reserves*

It is forbidden to kill or capture seals in the following reserves, which are seal breeding areas or the site of long-term scientific research:

- (a) The area around the South Orkney Islands between 60° 20' and 60° 56' South Latitude and 44° 05' and 46° 25' West Longitude.
- (b) The area of the southwestern Ross Sea south of 76° South Latitude and west of 170° East Longitude.
- (c) The area of Edisto Inlet south and west of a line drawn between Cape Hallett at 72° 19' South Latitude, 170° 18' East Longitude, and Helm Point, at 72° 11' South Latitude, 170° 00' East Longitude.

6. *Exchange of Information*

- (a) Contracting Parties shall provide before 31 October each year to other Contracting Parties and to SCAR a summary of statistical information on all seals killed or captured by their nationals and vessels under their respective flags in the Convention area, in respect of the preceding period 1 July to 30 June. This information shall include by zones and months:
  - (i) The gross and nett tonnage, brake horse-power, number of crew, and number of days' operation of vessels under the flag of the Contracting Party;
  - (ii) The number of adult individuals and pups of each species taken. When specially requested, this information shall be provided in respect of each ship, together with its daily position at noon each operating day and the catch on that day.
- (b) When an industry has started, reports of the number of seals of each species killed or captured in each zone shall be made to SCAR in the form and at the intervals (not shorter than one week) requested by that body.
- (c) Contracting Parties shall provide to SCAR biological information, in particular:
  - (i) Sex
  - (ii) Reproductive condition

(iii) Age

SCAR may request additional information or material with the approval of the Contracting Parties.

- (d) Contracting Parties shall provide to other Contracting Parties and to SCAR at least 30 days in advance of departure from their home ports, information on proposed sealing expeditions.

7. *Sealing Methods*

- (a) SCAR is invited to report on methods of sealing and to make recommendations with a view to ensuring that the killing or capturing of seals is quick, painless and efficient. Contracting Parties, as appropriate, shall adopt rules for their nationals and vessels under their respective flags engaged in the killing and capturing of seals, giving due consideration to the views of SCAR.
- (b) In the light of the available scientific and technical data, Contracting Parties agree to take appropriate steps to ensure that their nationals and vessels under their respective flags refrain from killing or capturing seals in the water, except in limited quantities to provide for scientific research in conformity with the objectives and principles of this Convention. Such research shall include studies as to the effectiveness of methods of sealing from the viewpoint of the management and humane and rational utilization of the Antarctic seal resources for conservation purposes. The undertaking and the results of any such scientific research programme shall be communicated to SCAR and the Depository which shall transmit them to the Contracting Parties.

## **Schedule 2—English text of paragraphs 21, 31 and 36 of the report of the 1988 Meeting of the Representatives of the Contracting Parties to the Seals Convention**

### Section 3

21. Representatives, pursuant to paragraph 19(a) above, agreed to recommend for approval by their respective Governments, that the Annex be changed in the following way:

Section 1: for 1 July to 30 June read 1 March to the last day in February.

Section 6(a): for 31 October read 30 June and for 1 July to 30 June read 1 March to the last day in February.

31. Accordingly, they agreed on the text of the following amendment to the Annex (new paragraph 8) which they recommended to the Governments of Contracting Parties for their approval.

#### “8. Cooperation

The Contracting Parties to this Convention shall, as appropriate, cooperate and exchange information with the Contracting Parties to the other international instruments within the Antarctic Treaty System and their respective institutions.”

36. Representatives, noting that they agreed on the desirability of extending the protection afforded to Weddell seals to include pups during the breeding season, agreed to recommend to Governments the deletion in section 2 of the Annex of the words “one year old or older”.



## **Schedule 3—Protocol on Environmental Protection to the Antarctic Treaty**

### Section 3

#### PREAMBLE

The States Parties to this Protocol to the Antarctic Treaty, hereinafter referred to as the Parties,

Convinced of the need to enhance the protection of the Antarctic environment and dependent and associated ecosystems;

Convinced of the need to strengthen the Antarctic Treaty system so as to ensure that Antarctica shall continue forever to be used exclusively for peaceful purposes and shall not become the scene or object of international discord;

Bearing in mind the special legal and political status of Antarctica and the special responsibility of the Antarctic Treaty Consultative Parties to ensure that all activities in Antarctica are consistent with the purposes and principles of the Antarctic Treaty;

Recalling the designation of Antarctica as a Special Conservation Area and other measures adopted under the Antarctic Treaty system to protect the Antarctic environment and dependent and associated ecosystems;

Acknowledging further the unique opportunities Antarctica offers for scientific monitoring of and research on processes of global as well as regional importance;

Reaffirming the conservation principles of the Convention on the Conservation of Antarctic Marine Living Resources;

Convinced that the development of a comprehensive regime for the protection of the Antarctic environment and dependent and associated ecosystems is in the interest of mankind as a whole;

Desiring to supplement the Antarctic Treaty to this end;

Have agreed as follows:

ARTICLE 1

*DEFINITIONS*

For the purposes of this Protocol:

- (a) “The Antarctic Treaty” means the Antarctic Treaty done at Washington on 1 December 1959;
- (b) “Antarctic Treaty area” means the area to which the provisions of the Antarctic Treaty apply in accordance with Article VI of that Treaty;
- (c) “Antarctic Treaty Consultative Meetings” means the meetings referred to in Article IX of the Antarctic Treaty;
- (d) “Antarctic Treaty Consultative Parties” means the Contracting Parties to the Antarctic Treaty entitled to appoint representatives to participate in the meetings referred to in Article IX of that Treaty;
- (e) “Antarctic Treaty system” means the Antarctic Treaty, the measures in effect under that Treaty, its associated separate international instruments in force and the measures in effect under those instruments;
- (f) “Arbitral Tribunal” means the Arbitral Tribunal established in accordance with the Schedule to this Protocol, which forms an integral part thereof;
- (g) “Committee” means the Committee for Environmental Protection established in accordance with Article 11.

ARTICLE 2

*OBJECTIVE AND DESIGNATION*

The Parties commit themselves to the comprehensive protection of the Antarctic environment and dependent and associated ecosystems and hereby designate Antarctica as a natural reserve, devoted to peace and science.

ARTICLE 3

*ENVIRONMENTAL PRINCIPLES*

1. The protection of the Antarctic environment and dependent and associated ecosystems and the intrinsic value of Antarctica, including its wilderness and aesthetic values and its value as an area for the conduct of scientific research, in particular research essential to understanding the global environment, shall be fundamental considerations in the planning and conduct of all activities in the Antarctic Treaty area.

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2. To this end:

- (a) activities in the Antarctic Treaty area shall be planned and conducted so as to limit adverse impacts on the Antarctic environment and dependent and associated ecosystems;
- (b) activities in the Antarctic Treaty area shall be planned and conducted so as to avoid:
  - (i) adverse effects on climate or weather patterns;
  - (ii) significant adverse effects on air or water quality;
  - (iii) significant changes in the atmospheric, terrestrial (including aquatic), glacial or marine environments;
  - (iv) detrimental changes in the distribution, abundance or productivity of species or populations of species of fauna and flora;
  - (v) further jeopardy to endangered or threatened species or populations of such species; or
  - (vi) degradation of, or substantial risk to, areas of biological, scientific, historic, aesthetic or wilderness significance;
- (c) activities in the Antarctic Treaty area shall be planned and conducted on the basis of information sufficient to allow prior assessments of, and informed judgments about, their possible impacts on the Antarctic environment and dependent and associated ecosystems and on the value of Antarctica for the conduct of scientific research; such judgments shall take full account of:
  - (i) the scope of the activity, including its area, duration and intensity;
  - (ii) the cumulative impacts of the activity, both by itself and in combination with other activities in the Antarctic Treaty area;
  - (iii) whether the activity will detrimentally affect any other activity in the Antarctic Treaty area;
  - (iv) whether technology and procedures are available to provide for environmentally safe operations;
  - (v) whether there exists the capacity to monitor key environmental parameters and ecosystem components so as to identify and provide early warning of any adverse effects of the activity and to provide for such modification of operating procedures as may be necessary in the light of the results of monitoring or increased knowledge of the Antarctic environment and dependent and associated ecosystems; and

- (vi) whether there exists the capacity to respond promptly and effectively to accidents, particularly those with potential environmental effects;
  - (d) regular and effective monitoring shall take place to allow assessment of the impacts of ongoing activities, including the verification of predicted impacts;
  - (e) regular and effective monitoring shall take place to facilitate early detection of the possible unforeseen effects of activities carried on both within and outside the Antarctic Treaty area on the Antarctic environment and dependent and associated ecosystems.
3. Activities shall be planned and conducted in the Antarctic Treaty area so as to accord priority to scientific research and to preserve the value of Antarctica as an area for the conduct of such research, including research essential to understanding the global environment.
4. Activities undertaken in the Antarctic Treaty area pursuant to scientific research programmes, tourism and all other governmental and non-governmental activities in the Antarctic Treaty area for which advance notice is required in accordance with Article VII (5) of the Antarctic Treaty, including associated logistic support activities, shall:
- (a) take place in a manner consistent with the principles in this Article; and
  - (b) be modified, suspended or cancelled if they result in or threaten to result in impacts upon the Antarctic environment or dependent or associated ecosystems inconsistent with those principles.

#### ARTICLE 4

##### *RELATIONSHIP WITH THE OTHER COMPONENTS OF THE ANTARCTIC TREATY SYSTEM*

1. This Protocol shall supplement the Antarctic Treaty and shall neither modify nor amend that Treaty.
2. Nothing in this Protocol shall derogate from the rights and obligations of the Parties to this Protocol under the other international instruments in force within the Antarctic Treaty system.

ARTICLE 5

*CONSISTENCY WITH THE OTHER COMPONENTS OF THE ANTARCTIC TREATY SYSTEM*

The Parties shall consult and co-operate with the Contracting Parties to the other international instruments in force within the Antarctic Treaty system and their respective institutions with a view to ensuring the achievement of the objectives and principles of this Protocol and avoiding any interference with the achievement of the objectives and principles of those instruments or any inconsistency between the implementation of those instruments and of this Protocol.

ARTICLE 6

*CO-OPERATION*

1. The Parties shall co-operate in the planning and conduct of activities in the Antarctic Treaty area. To this end, each Party shall endeavour to:
  - (a) promote co-operative programmes of scientific, technical and educational value, concerning the protection of the Antarctic environment and dependent and associated ecosystems;
  - (b) provide appropriate assistance to other Parties in the preparation of environmental impact assessments;
  - (c) provide to other Parties upon request information relevant to any potential environmental risk and assistance to minimize the effects of accidents which may damage the Antarctic environment or dependent and associated ecosystems;
  - (d) consult with other Parties with regard to the choice of sites for prospective stations and other facilities so as to avoid the cumulative impacts caused by their excessive concentration in any location;
  - (e) where appropriate, undertake joint expeditions and share the use of stations and other facilities; and
  - (f) carry out such steps as may be agreed upon at Antarctic Treaty Consultative Meetings.
2. Each Party undertakes, to the extent possible, to share information that may be helpful to other Parties in planning and conducting their activities in the Antarctic Treaty area, with a view to the protection of the Antarctic environment and dependent and associated ecosystems.
3. The Parties shall co-operate with those Parties which may exercise jurisdiction in areas adjacent to the Antarctic Treaty area with a view to

ensuring that activities in the Antarctic Treaty area do not have adverse environmental impacts on those areas.

ARTICLE 7

*PROHIBITION OF MINERAL RESOURCE ACTIVITIES*

Any activity relating to mineral resources, other than scientific research, shall be prohibited.

ARTICLE 8

*ENVIRONMENTAL IMPACT ASSESSMENT*

1. Proposed activities referred to in paragraph 2 below shall be subject to the procedures set out in Annex I for prior assessment of the impacts of those activities on the Antarctic environment or on dependent or associated ecosystems according to whether those activities are identified as having:
  - (a) less than a minor or transitory impact;
  - (b) a minor or transitory impact; or
  - (c) more than a minor or transitory impact.
2. Each Party shall ensure that the assessment procedures set out in Annex I are applied in the planning processes leading to decisions about any activities undertaken in the Antarctic Treaty area pursuant to scientific research programmes, tourism and all other governmental and non-governmental activities in the Antarctic Treaty area for which advance notice is required under Article VII(5) of the Antarctic Treaty, including associated logistic support activities.
3. The assessment procedures set out in Annex I shall apply to any change in an activity whether the change arises from an increase or decrease in the intensity of an existing activity, from the addition of an activity, the decommissioning of a facility, or otherwise.
4. Where activities are planned jointly by more than one Party, the Parties involved shall nominate one of their number to coordinate the implementation of the environmental impact assessment procedures set out in Annex I.

ARTICLE 9

*ANNEXES*

1. The Annexes to this Protocol shall form an integral part thereof.
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2. Annexes, additional to Annexes I-IV, may be adopted and become effective in accordance with Article IX of the Antarctic Treaty.
3. Amendments and modifications to Annexes may be adopted and become effective in accordance with Article IX of the Antarctic Treaty, provided that any Annex may itself make provision for amendments and modifications to become effective on an accelerated basis.
4. Annexes and any amendments and modifications thereto which have become effective in accordance with paragraphs 2 and 3 above shall, unless an Annex itself provides otherwise in respect of the entry into effect of any amendment or modification thereto, become effective for a Contracting Party to the Antarctic Treaty which is not an Antarctic Treaty Consultative Party, or which was not an Antarctic Treaty Consultative Party at the time of the adoption, when notice of approval of that Contracting Party has been received by the Depositary.
5. Annexes shall, except to the extent that an Annex provides otherwise, be subject to the procedures for dispute settlement set out in Articles 18 to 20.

#### ARTICLE 10

##### *ANTARCTIC TREATY CONSULTATIVE MEETINGS*

1. Antarctic Treaty Consultative Meetings shall, drawing upon the best scientific and technical advice available:
  - (a) define, in accordance with the provisions of this Protocol, the general policy for the comprehensive protection of the Antarctic environment and dependent and associated ecosystems; and
  - (b) adopt measures under Article IX of the Antarctic Treaty for the implementation of this Protocol.
2. Antarctic Treaty Consultative Meetings shall review the work of the Committee and shall draw fully upon its advice and recommendations in carrying out the tasks referred to in paragraph 1 above, as well as upon the advice of the Scientific Committee on Antarctic Research.

#### ARTICLE 11

##### *COMMITTEE FOR ENVIRONMENTAL PROTECTION*

1. There is hereby established the Committee for Environmental Protection.
2. Each Party shall be entitled to be a member of the Committee and to appoint a representative who may be accompanied by experts and advisers.

3. Observer status in the Committee shall be open to any Contracting Party to the Antarctic Treaty which is not a Party to this Protocol.
4. The Committee shall invite the President of the Scientific Committee on Antarctic Research and the Chairman of the Scientific Committee for the Conservation of Antarctic Marine Living Resources to participate as observers at its sessions. The Committee may also, with the approval of the Antarctic Treaty Consultative Meeting, invite such other relevant scientific, environmental and technical organisations which can contribute to its work to participate as observers at its sessions.
5. The Committee shall present a report on each of its sessions to the Antarctic Treaty Consultative Meeting. The report shall cover all matters considered at the session and shall reflect the views expressed. The report shall be circulated to the Parties and to observers attending the session, and shall thereupon be made publicly available.
6. The Committee shall adopt its rules of procedure which shall be subject to approval by the Antarctic Treaty Consultative Meeting.

## ARTICLE 12

### *FUNCTIONS OF THE COMMITTEE*

1. The functions of the Committee shall be to provide advice and formulate recommendations to the Parties in connection with the implementation of this Protocol, including the operation of its Annexes, for consideration at Antarctic Treaty Consultative Meetings, and to perform such other functions as may be referred to it by the Antarctic Treaty Consultative Meetings. In particular, it shall provide advice on:
  - (a) the effectiveness of measures taken pursuant to this Protocol;
  - (b) the need to update, strengthen or otherwise improve such measures;
  - (c) the need for additional measures, including the need for additional Annexes, where appropriate;
  - (d) the application and implementation of the environmental impact assessment procedures set out in Article 8 and Annex I;
  - (e) means of minimising or mitigating environmental impacts of activities in the Antarctic Treaty area;
  - (f) procedures for situations requiring urgent action, including response action in environmental emergencies;
  - (g) the operation and further elaboration of the Antarctic Protected Area system;



- (h) inspection procedures, including formats for inspection reports and checklists for the conduct of inspections;
  - (i) the collection, archiving, exchange and evaluation of information related to environmental protection;
  - (j) the state of the Antarctic environment; and
  - (k) the need for scientific research, including environmental monitoring, related to the implementation of this Protocol.
2. In carrying out its functions, the Committee shall, as appropriate, consult with the Scientific Committee on Antarctic Research, the Scientific Committee for the Conservation of Antarctic Marine Living Resources and other relevant scientific, environmental and technical organizations.

### ARTICLE 13

#### *COMPLIANCE WITH THIS PROTOCOL*

1. Each Party shall take appropriate measures within its competence, including the adoption of laws and regulations, administrative actions and enforcement measures, to ensure compliance with this Protocol.
2. Each Party shall exert appropriate efforts, consistent with the Charter of the United Nations, to the end that no one engages in any activity contrary to this Protocol.
3. Each Party shall notify all other Parties of the measures it takes pursuant to paragraphs 1 and 2 above.
4. Each Party shall draw the attention of all other Parties to any activity which in its option affects the implementation of the objectives and principles of this Protocol.
5. The Antarctic Treaty Consultative Meetings shall draw the attention of any State which is not a Party to this Protocol to any activity undertaken by that State, its agencies, instrumentalities, natural or juridical persons, ships, aircraft or other means of transport which affects the implementation of the objectives and principles of this Protocol.

ARTICLE 14

*INSPECTION*

1. In order to promote the protection of the Antarctic environment and dependent and associated ecosystems, and to ensure compliance with this Protocol, the Antarctic Treaty Consultative Parties shall arrange, individually or collectively, for inspections by observers to be made in accordance with Article VII of the Antarctic Treaty.
2. Observers are:
  - (a) observers designated by any Antarctic Treaty Consultative Party who shall be nationals of that Party; and
  - (b) any observers designated at Antarctic Treaty Consultative Meetings to carry out inspections under procedures to be established by an Antarctic Treaty Consultative Meeting.
3. Parties shall co-operate fully with observers undertaking inspections, and shall ensure that during inspections, observers are given access to all parts of stations, installations, equipment, ships and aircraft open to inspection under Article VII (3) of the Antarctic Treaty, as well as to all records maintained thereon which are called for pursuant to this Protocol.
4. Reports of inspections shall be sent to the Parties whose stations, installations, equipment, ships or aircraft are covered by the reports. After those Parties have been given the opportunity to comment, the reports and any comments thereon shall be circulated to all the Parties and to the Committee, considered at the next Antarctic Treaty Consultative Meeting, and thereafter made publicly available.

ARTICLE 15

*EMERGENCY RESPONSE ACTION*

1. In order to respond to environmental emergencies in the Antarctic Treaty area, each Party agrees to:
  - (a) provide for prompt and effective response action to such emergencies which might arise in the performance of scientific research programmes, tourism and all other governmental and non-governmental activities in the Antarctic Treaty area for which advance notice is required under Article

VII (5) of the Antarctic Treaty, including associated logistic support activities; and

(b) establish contingency plans for response to incidents with potential adverse effects on the Antarctic environment or dependent and associated ecosystems.

2. To this end, the Parties shall:

(a) co-operate in the formulation and implementation of such contingency plans; and

(b) establish procedures for immediate notification of, and co-operative response to, environmental emergencies.

3. In the implementation of this Article, the Parties shall draw upon the advice of the appropriate international organisations.

#### ARTICLE 16

##### *LIABILITY*

Consistent with the objectives of this Protocol for the comprehensive protection of the Antarctic environment and dependent and associated ecosystems, the Parties undertake to elaborate rules and procedures relating to liability for damage arising from activities taking place in the Antarctic Treaty area and covered by this Protocol. Those rules and procedures shall be included in one or more Annexes to be adopted in accordance with Article 9 (2).

#### ARTICLE 17

##### *ANNUAL REPORT BY PARTIES*

1. Each Party shall report annually on the steps taken to implement this Protocol. Such reports shall include notifications made in accordance with Article 13 (3), contingency plans established in accordance with Article 15 and any other notifications and information called for pursuant to this Protocol for which there is no other provision concerning the circulation and exchange of information.

2. Reports made in accordance with paragraph 1 above shall be circulated to all Parties and to the Committee, considered at the next Antarctic Treaty Consultative Meeting, and made publicly available.

ARTICLE 18

*DISPUTE SETTLEMENT*

If a dispute arises concerning the interpretation or application of this Protocol, the parties to the dispute shall, at the request of any one of them, consult among themselves as soon as possible with a view to having the dispute resolved by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means to which the parties to the dispute agree.

ARTICLE 19

*CHOICE OF DISPUTE SETTLEMENT PROCEDURE*

1. Each Party, when signing, ratifying, accepting, approving or acceding to this Protocol, or at any time thereafter, may choose, by written declaration, one or both of the following means for the settlement of disputes concerning the interpretation or application of Articles 7, 8 and 15 and, except to the extent that an Annex provides otherwise, the provisions of any Annex and, insofar as it relates to these Articles and provisions, Article 13:

- (a) the International Court of Justice;
- (b) the Arbitral Tribunal.

2. A declaration made under paragraph 1 above shall not affect the operation of Article 18 and Article 20 (2).

3. A Party which has not made a declaration under paragraph 1 above or in respect of which a declaration is no longer in force shall be deemed to have accepted the competence of the Arbitral Tribunal.

4. If the parties to a dispute have accepted the same means for the settlement of a dispute, the dispute may be submitted only to that procedure, unless the parties otherwise agree.

5. If the parties to a dispute have not accepted the same means for the settlement of a dispute, or if they have both accepted both means, the dispute may be submitted only to the Arbitral Tribunal, unless the parties otherwise agree.

6. A declaration made under paragraph 1 above shall remain in force until it expires in accordance with its terms or until three months after written notice of revocation has been deposited with the Depositary.

7. A new declaration, a notice of revocation or the expiry of a declaration shall not in any way affect proceedings pending before the International Court of Justice or the Arbitral Tribunal, unless the parties to the dispute otherwise agree.

8. Declarations and notices referred to in this Article shall be deposited with the Depositary who shall transmit copies thereof to all Parties.

#### ARTICLE 20

##### *DISPUTE SETTLEMENT PROCEDURE*

1. If the parties to a dispute concerning the interpretation or application of Articles 7, 8 or 15 or, except to the extent that an Annex provides otherwise, the provisions of any Annex or, insofar as it relates to these Articles and provisions, Article 13, have not agreed on a means for resolving it within 12 months of the request for consultation pursuant to Article 18, the dispute shall be referred, at the request of any party to the dispute, for settlement in accordance with the procedure determined by Article 19 (4) and (5).

2. The Arbitral Tribunal shall not be competent to decide or rule upon any matter within the scope of Article IV of the Antarctic Treaty. In addition, nothing in this Protocol shall be interpreted as conferring competence or jurisdiction on the International Court of Justice or any other tribunal established for the purpose of settling disputes between Parties to decide or otherwise rule upon any matter within the scope of Article IV of the Antarctic Treaty.

#### ARTICLE 21

##### *SIGNATURE*

This Protocol shall be open for signature at Madrid on the 4th of October 1991 and thereafter at Washington until the 3rd of October 1992 by any State which is a Contracting Party to the Antarctic Treaty.

#### ARTICLE 22

##### *RATIFICATION, ACCEPTANCE, APPROVAL OR ACCESSION*

1. This Protocol is subject to ratification, acceptance or approval by signatory States.

2. After the 3rd of October 1992 this Protocol shall be open for accession by any State which is a Contracting Party to the Antarctic Treaty.
3. Instruments of ratification, acceptance, approval or accession shall be deposited with the Government of the United States of America, hereby designated as the Depositary.
4. After the date on which this Protocol has entered into force, the Antarctic Treaty Consultative Parties shall not act upon a notification regarding the entitlement of a Contracting Party to the Antarctic Treaty to appoint representatives to participate in Antarctic Treaty Consultative Meetings in accordance with Article IX (2) of the Antarctic Treaty unless that Contracting Party has first ratified, accepted, approved or acceded to this Protocol.

#### ARTICLE 23

##### *ENTRY INTO FORCE*

1. This Protocol shall enter into force on the thirtieth day following the date of deposit of instruments of ratification, acceptance, approval or accession by all States which are Antarctic Treaty Consultative Parties at the date on which this Protocol is adopted.
2. For each Contracting Party to the Antarctic Treaty which, subsequent to the date of entry into force of this Protocol, deposits an instrument of ratification, acceptance, approval or accession, this Protocol shall enter into force on the thirtieth day following such deposit.

#### ARTICLE 24

##### *RESERVATIONS*

Reservations to this Protocol shall not be permitted.

#### ARTICLE 25

##### *MODIFICATION OR AMENDMENT*

1. Without prejudice to the provisions of Article 9, this Protocol may be modified or amended at any time in accordance with the procedures set forth in Article XII (1) (a) and (b) of the Antarctic Treaty.
  2. If, after the expiration of 50 years from the date of entry into force of this Protocol, any of the Antarctic Treaty Consultative Parties so requests by a
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communication addressed to the Depositary, a conference shall be held as soon as practicable to review the operation of this Protocol.

3. A modification or amendment proposed at any Review Conference called pursuant to paragraph 2 above shall be adopted by a majority of the Parties, including 3/4 of the States which are Antarctic Treaty Consultative Parties at the time of adoption of this Protocol.

4. A modification or amendment adopted pursuant to paragraph 3 above shall enter into force upon ratification, acceptance, approval or accession by 3/4 of the Antarctic Treaty Consultative Parties, including ratification, acceptance, approval or accession by all States which are Antarctic Treaty Consultative Parties at the time of adoption of this Protocol.

5. (a) With respect to Article 7, the prohibition on Antarctic mineral resource activities contained therein shall continue unless there is in force a binding legal regime on Antarctic mineral resource activities that includes an agreed means for determining whether, and, if so, under which conditions, any such activities would be acceptable. This regime shall fully safeguard the interests of all States referred to in Article IV of the Antarctic Treaty and apply the principles thereof. Therefore, if a modification or amendment to Article 7 is proposed at a Review Conference referred to in paragraph 2 above, it shall include such a binding legal regime.

(b) If any such modification or amendment has not entered into force within 3 years of the date of its adoption, any Party may at any time thereafter notify to the Depositary of its withdrawal from this Protocol, and such withdrawal shall take effect 2 years after receipt of the notification by the Depositary.

## ARTICLE 26

### *NOTIFICATIONS BY THE DEPOSITARY*

The Depositary shall notify all Contracting Parties to the Antarctic Treaty of the following:

- (a) signatures of this Protocol and the deposit of instruments of ratification, acceptance, approval or accession;
- (b) the date of entry into force of this Protocol and any additional Annex thereto;
- (c) the date of entry into force of any amendment or modification to this Protocol;

- (d) the deposit of declarations and notices pursuant to Article 19; and
- (e) any notification received pursuant to Article 25 (5) (b).

ARTICLE 27

*AUTHENTIC TEXTS AND REGISTRATION WITH THE UNITED NATIONS*

1. This Protocol, done in the English, French, Russian and Spanish languages, each version being equally authentic, shall be deposited in the archives of the Government of the United States of America, which shall transmit duly certified copies thereof to all Contracting Parties to the Antarctic Treaty.
2. This Protocol shall be registered by the Depositary pursuant to Article 102 of the Charter of the United Nations.

SCHEDULE TO THE PROTOCOL

*ARBITRATION*

Article 1

1. The Arbitral Tribunal shall be constituted and shall function in accordance with the Protocol, including this Schedule.
2. The Secretary referred to in this Schedule is the Secretary General of the Permanent Court of Arbitration.

Article 2

1. Each Party shall be entitled to designate up to three Arbitrators, at least one of whom shall be designated within three months of the entry into force of the Protocol for that Party. Each Arbitrator shall be experienced in Antarctic affairs, have thorough knowledge of international law and enjoy the highest reputation for fairness, competence and integrity. The names of the persons so designated shall constitute the list of Arbitrators. Each Party shall at all times maintain the name of at least one Arbitrator on the list.
  2. Subject to paragraph 3 below, an Arbitrator designated by a Party shall remain on the list for a period of five years and shall be eligible for redesignation by that Party for additional five year periods.
  3. A Party which designated an Arbitrator may withdraw the name of that Arbitrator from the list. If an Arbitrator dies or if a Party for any reason withdraws from the list the name of an Arbitrator designated by it, the Party
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which designated the Arbitrator in question shall notify the Secretary promptly. An Arbitrator whose name is withdrawn from the list shall continue to serve on any Arbitral Tribunal to which that Arbitrator has been appointed until the completion of proceedings before the Arbitral Tribunal.

4. The Secretary shall ensure that an up-to-date list is maintained of the Arbitrators designated pursuant to this Article.

### Article 3

1. The Arbitral Tribunal shall be composed of three Arbitrators who shall be appointed as follows:

- (a) The party to the dispute commencing the proceedings shall appoint one Arbitrator, who may be its national, from the list referred to in Article 2. This appointment shall be included in the notification referred to in Article 4.
- (b) Within 40 days of the receipt of that notification, the other party to the dispute shall appoint the second Arbitrator, who may be its national, from the list referred to in Article 2.
- (c) Within 60 days of the appointment of the second Arbitrator, the parties to the dispute shall appoint by agreement the third Arbitrator from the list referred to in Article 2. The third Arbitrator shall not be either a national of a party to the dispute, or a person designated for the list referred to in Article 2 by a party to the dispute, or of the same nationality as either of the first two Arbitrators. The third Arbitrator shall be the Chairperson of the Arbitral Tribunal.
- (d) If the second Arbitrator has not been appointed within the prescribed period, or if the parties to the dispute have not reached agreement within the prescribed period on the appointment of the third Arbitrator, the Arbitrator or Arbitrators shall be appointed, at the request of any party to the dispute and within 30 days of the receipt of such request, by the President of the International Court of Justice from the list referred to in Article 2 and subject to the conditions prescribed in subparagraphs (b) and (c) above. In performing the functions accorded him or her in this subparagraph, the President of the Court shall consult the parties to the dispute.
- (e) If the President of the International Court of Justice is unable to perform the functions accorded him or her in subparagraph (d) above

or is a national of a party to the dispute, the functions shall be performed by the Vice-President of the Court, except that if the Vice-President is unable to perform the functions or is a national of a party to the dispute the functions shall be performed by the next most senior member of the Court who is available and is not a national of a party to the dispute.

2. Any vacancy shall be filled in the manner prescribed for the initial appointment.
3. In any dispute involving more than two Parties, those Parties having the same interest shall appoint one Arbitrator by agreement within the period specified in paragraph 1 (b) above.

#### Article 4

The party to the dispute commencing proceedings shall so notify the other party or parties to the dispute and the Secretary in writing. Such notification shall include a statement of the claim and the grounds on which it is based. The notification shall be transmitted by the Secretary to all Parties.

#### Article 5

1. Unless the parties to the dispute agree otherwise, arbitration shall take place at The Hague, where the records of the Arbitral Tribunal shall be kept. The Arbitral Tribunal shall adopt its own rules of procedure. Such rules shall ensure that each party to the dispute has a full opportunity to be heard and to present its case and shall also ensure that the proceedings are conducted expeditiously.
2. The Arbitral Tribunal may hear and decide counterclaims arising out of the dispute.

#### Article 6

1. The Arbitral Tribunal, where it considers that *prima facie* it has jurisdiction under the Protocol, may:
  - (a) at the request of any party to a dispute, indicate such provisional measures as it considers necessary to preserve the respective rights of the parties to the dispute;
  - (b) prescribe any provisional measures which it considers appropriate under the circumstances to prevent serious harm to the Antarctic environment or dependent or associated ecosystems.

2. The parties to the dispute shall comply promptly with any provisional measures prescribed under paragraph 1 (b) above pending an award under Article 10.

3. Notwithstanding the time period in Article 20 of the Protocol, a party to a dispute may at any time, by notification to the other party or parties to the dispute and to the Secretary in accordance with Article 4, request that the Arbitral Tribunal be constituted as a matter of exceptional urgency to indicate or prescribe emergency provisional measures in accordance with this Article. In such case, the Arbitral Tribunal shall be constituted as soon as possible in accordance with Article 3, except that the time periods in Article 3 (1) (b), (c) and (d) shall be reduced to 14 days in each case. The Arbitral Tribunal shall decide upon the request for emergency provisional measures within two months of the appointment of its Chairperson.

4. Following a decision by the Arbitral Tribunal upon a request for emergency provisional measures in accordance with paragraph 3 above, settlement of the dispute shall proceed in accordance with Articles 18, 19 and 20 of the Protocol.

#### Article 7

Any Party which believes it has a legal interest, whether general or individual, which may be substantially affected by the award of an Arbitral Tribunal, may, unless the Arbitral Tribunal decides otherwise, intervene in the proceedings.

#### Article 8

The parties to the dispute shall facilitate the work of the Arbitral Tribunal and, in particular, in accordance with their law and using all means at their disposal, shall provide it with all relevant documents and information, and enable it, when necessary, to call witnesses or experts and receive their evidence.

#### Article 9

If one of the parties to the dispute does not appear before the Arbitral Tribunal or fails to defend its case, any other party to the dispute may request the Arbitral Tribunal to continue the proceedings and make its award.

#### Article 10

1. The Arbitral Tribunal shall, on the basis of the provisions of the Protocol and other applicable rules and principles of international law that are not incompatible with such provisions, decide such disputes as are submitted to it.

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2. The Arbitral Tribunal may decide, *ex aequo et bono*, a dispute submitted to it, if the parties to the dispute so agree.

#### Article 11

1. Before making its award, the Arbitral Tribunal shall satisfy itself that it has competence in respect of the dispute and that the claim or counterclaim is well founded in fact and law.

2. The award shall be accompanied by a statement of reasons for the decision and shall be communicated to the Secretary who shall transmit it to all Parties.

3. The award shall be final and binding on the parties to the dispute and on any Party which intervened in the proceedings and shall be complied with without delay. The Arbitral Tribunal shall interpret the award at the request of a party to the dispute or of any intervening Party.

4. The award shall have no binding force except in respect of that particular case.

5. Unless the Arbitral Tribunal decides otherwise, the expenses of the Arbitral Tribunal, including the remuneration of the Arbitrators, shall be borne by the parties to the dispute in equal shares.

#### Article 12

All decisions of the Arbitral Tribunal, including those referred to in Articles 5, 6 and 11, shall be made by a majority of the Arbitrators who may not abstain from voting.

#### Article 13

This Schedule may be amended or modified by a measure adopted in accordance with Article IX (1) of the Antarctic Treaty. Unless the measure specifies otherwise, the amendment or modification shall be deemed to have been approved, and shall become effective, one year after the close of the Antarctic Treaty Consultative Meeting at which it was adopted, unless one or more of the Antarctic Treaty Consultative Parties notifies the Depositary, within that time period, that it wishes an extension of that period or that it is unable to approve the measure.

2. Any amendment or modification of this Schedule which becomes effective in accordance with paragraph 1 above shall thereafter become effective as to

any other Party when notice of approval by it has been received by the Depositary.

ANNEX I TO THE PROTOCOL ON ENVIRONMENTAL PROTECTION TO  
THE ANTARCTIC TREATY

ENVIRONMENTAL IMPACT ASSESSMENT

ARTICLE 1

*PRELIMINARY STAGE*

1. The environmental impacts of proposed activities referred to in Article 8 of the Protocol shall, before their commencement, be considered in accordance with appropriate national procedures.
2. If an activity is determined as having less than a minor or transitory impact, the activity may proceed forthwith.

ARTICLE 2

*INITIAL ENVIRONMENTAL EVALUATION*

1. Unless it has been determined that an activity will have less than a minor or transitory impact, or unless a Comprehensive Environmental Evaluation is being prepared in accordance with Article 3, an Initial Environmental Evaluation shall be prepared. It shall contain sufficient detail to assess whether a proposed activity may have more than a minor or transitory impact and shall include:
  - (a) a description of the proposed activity, including its purpose, location, duration, and intensity; and
  - (b) consideration of alternatives to the proposed activity and any impacts that the activity may have, including consideration of cumulative impacts in the light of existing and known planned activities.
2. If an Initial Environmental Evaluation indicates that a proposed activity is likely to have no more than a minor or transitory impact, the activity may proceed, provided that appropriate procedures, which may include monitoring, are put in place to assess and verify the impact of the activity.

ARTICLE 3

*COMPREHENSIVE ENVIRONMENTAL EVALUATION*

1. If an Initial Environmental Evaluation indicates or if it is otherwise determined that a proposed activity is likely to have more than a minor or transitory impact, a Comprehensive Environmental Evaluation shall be prepared.
2. A Comprehensive Environmental Evaluation shall include:
  - (a) a description of the proposed activity including its purpose, location, duration and intensity, and possible alternatives to the activity, including the alternative of not proceeding, and the consequences of those alternatives;
  - (b) a description of the initial environmental reference state with which predicted changes are to be compared and a prediction of the future environmental reference state in the absence of the proposed activity;
  - (c) a description of the methods and data used to forecast the impacts of the proposed activity;
  - (d) estimation of the nature, extent, duration, and intensity of the likely direct impacts of the proposed activity;
  - (e) consideration of possible indirect or second order impacts of the proposed activity;
  - (f) consideration of cumulative impacts of the proposed activity in the light of existing activities and other known planned activities;
  - (g) identification of measures, including monitoring programmes, that could be taken to minimise or mitigate impacts of the proposed activity and to detect unforeseen impacts and that could provide early warning of any adverse effects of the activity as well as to deal promptly and effectively with accidents;
  - (h) identification of unavoidable impacts of the proposed activity;
  - (i) consideration of the effects of the proposed activity on the conduct of scientific research and on other existing uses and values;
  - (j) an identification of gaps in knowledge and uncertainties encountered in compiling the information required under this paragraph;
  - (k) a non-technical summary of the information provided under this paragraph; and

- (l) the name and address of the person or organization which prepared the Comprehensive Environmental Evaluation and the address to which comments thereon should be directed.

3. The draft Comprehensive Environmental Evaluation shall be made publicly available and shall be circulated to all Parties, which shall also make it publicly available, for comment. A period of 90 days shall be allowed for the receipt of comments.

4. The draft Comprehensive Environmental Evaluation shall be forwarded to the Committee at the same time as it is circulated to the Parties, and at least 120 days before the next Antarctic Treaty Consultative Meeting, for consideration as appropriate.

5. No final decision shall be taken to proceed with the proposed activity in the Antarctic Treaty area unless there has been an opportunity for consideration of the draft Comprehensive Environmental Evaluation by the Antarctic Treaty Consultative Meeting on the advice of the Committee, provided that no decision to proceed with a proposed activity shall be delayed through the operation of this paragraph for longer than 15 months from the date of circulation of the draft Comprehensive Environmental Evaluation.

6. A final Comprehensive Environmental Evaluation shall address and shall include or summarise comments received on the draft Comprehensive Environmental Evaluation. The final Comprehensive Environmental Evaluation, notice of any decisions relating thereto, and any evaluation of the significance of the predicted impacts in relation to the advantages of the proposed activity, shall be circulated to all Parties, which shall also make them publicly available, at least 60 days before the commencement of the proposed activity in the Antarctic Treaty area.

#### ARTICLE 4

##### *DECISIONS TO BE BASED ON COMPREHENSIVE ENVIRONMENTAL EVALUATIONS*

Any decision on whether a proposed activity, to which Article 3 applies, should proceed, and, if so, whether in its original or in a modified form, shall be based on the Comprehensive Environmental Evaluation as well as other relevant considerations.

#### ARTICLE 5

##### *MONITORING*

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1. Procedures shall be put in place, including appropriate monitoring of key environmental indicators, to assess and verify the impact of any activity that proceeds following the completion of a Comprehensive Environmental Evaluation.
2. The procedures referred to in paragraph 1 above and in Article 2 (2) shall be designed to provide a regular and verifiable record of the impacts of the activity in order, inter alia, to:
  - (a) enable assessments to be made of the extent to which such impacts are consistent with the Protocol; and
  - (b) provide information useful for minimising or mitigating impacts, and, where appropriate, information on the need for suspension, cancellation or modification of the activity.

#### ARTICLE 6

##### *CIRCULATION OF INFORMATION*

1. The following information shall be circulated to the Parties, forwarded to the Committee and made publicly available:
  - (a) a description of the procedures referred to in Article 1;
  - (b) an annual list of any Initial Environmental Evaluations prepared in accordance with Article 2 and any decisions taken in consequence thereof;
  - (c) significant information obtained, and any action taken in consequence thereof, from procedures put in place in accordance with Articles 2 (2) and 5; and
  - (d) information referred to in Article 3 (6).
2. Any Initial Environmental Evaluation prepared in accordance with Article 2 shall be made available on request.

#### ARTICLE 7

##### *CASES OF EMERGENCY*

1. This Annex shall not apply in cases of emergency relating to the safety of human life or of ships, aircraft or equipment and facilities of high value, or the
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protection of the environment, which require an activity to be undertaken without completion of the procedures set out in this Annex.

2. Notice of activities undertaken in cases of emergency, which would otherwise have required preparation of a Comprehensive Environmental Evaluation, shall be circulated immediately to all Parties and to the Committee and a full explanation of the activities carried out shall be provided within 90 days of those activities.

## ARTICLE 8

### *AMENDMENT OR MODIFICATION*

1. This Annex may be amended or modified by a measure adopted in accordance with Article IX (1) of the Antarctic Treaty. Unless the measure specifies otherwise, the amendment or modification shall be deemed to have been approved, and shall become effective, one year after the close of the Antarctic Treaty Consultative Meeting at which it was adopted, unless one or more of the Antarctic Treaty Consultative Parties notifies the Depositary, within that period, that it wishes an extension of that period or that it is unable to approve the measure.

2. Any amendment or modification of this Annex which becomes effective in accordance with paragraph 1 above shall thereafter become effective as to any other Party when notice of approval by it has been received by the Depositary.

## ANNEX II TO THE PROTOCOL ON ENVIRONMENTAL PROTECTION TO THE ANTARCTIC TREATY CONSERVATION OF ANTARCTIC FAUNA AND FLORA

### ARTICLE 1

#### *DEFINITIONS*

For the purposes of this Annex:

- (a) “native mammal” means any member of any species belonging to the Class Mammalia, indigenous to the Antarctic Treaty area or occurring there seasonally through natural migrations;
- (b) “native bird” means any member, at any stage of its life cycle (including eggs), of any species of the Class Aves indigenous to the Antarctic Treaty area or occurring there seasonally through natural migrations;

- (c) “native plant” means any terrestrial or freshwater vegetation, including bryophytes, lichens, fungi and algae, at any stage of its life cycle (including seeds, and other propagules), indigenous to the Antarctic Treaty area;
- (d) “native invertebrate” means any terrestrial or freshwater invertebrate, at any stage of its life cycle, indigenous to the Antarctic Treaty area;
- (e) “appropriate authority” means any person or agency authorized by a Party to issue permits under this Annex;
- (f) “permit” means a formal permission in writing issued by an appropriate authority;
- (g) “take or taking” means to kill, injure, capture, handle or molest, a native mammal or bird, or to remove or damage such quantities of native plants that their local distribution or abundance would be significantly affected;
- (h) “harmful interference” means:
  - (i) flying or landing helicopters or other aircraft in a manner that disturbs concentrations of birds and seals;
  - (ii) using vehicles or vessels, including hovercraft and small boats, in a manner that disturbs concentrations of birds and seals;
  - (iii) using explosives or firearms in a manner that disturbs concentrations of birds and seals;
  - (iv) wilfully disturbing breeding or moulting birds or concentrations of birds and seals by persons on foot;
  - (v) significantly damaging concentrations of native terrestrial plants by landing aircraft, driving vehicles, or walking on them, or by other means; and
  - (vi) any activity that results in the significant adverse modification of habitats of any species or population of native mammal, bird, plant or invertebrate.
- (i) “International Convention for the Regulation of Whaling” means the Convention done at Washington on 2 December 1946.

## ARTICLE 2

### *CASES OF EMERGENCY*

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1. This Annex shall not apply in cases of emergency relating to the safety of human life or of ships, aircraft, or equipment and facilities of high value, or the protection of the environment.
2. Notice of activities undertaken in cases of emergency shall be circulated immediately to all Parties and to the Committee.

### ARTICLE 3

#### *PROTECTION OF NATIVE FAUNA AND FLORA*

1. Taking or harmful interference shall be prohibited, except in accordance with a permit.
2. Such permits shall specify the authorized activity, including when, where and by whom it is to be conducted and shall be issued only in the following circumstances:
  - (a) to provide specimens for scientific study or scientific information;
  - (b) to provide specimens for museums, herbaria, zoological and botanical gardens, or other educational or cultural institutions or uses; and
  - (c) to provide for unavoidable consequences of scientific activities not otherwise authorized under sub-paragraphs (a) or (b) above, or of the construction and operation of scientific support facilities.
3. The issue of such permits shall be limited so as to ensure that:
  - (a) no more native mammals, birds, or plants are taken than are strictly necessary to meet the purposes set forth in paragraph 2 above;
  - (b) only small numbers of native mammals or birds are killed and in no case more native mammals or birds are killed from local populations than can, in combination with other permitted takings, normally be replaced by natural reproduction in the following season; and
  - (c) the diversity of species, as well as the habitats essential to their existence, and the balance of the ecological systems existing within the Antarctic Treaty area are maintained.
4. Any species of native mammals, birds and plants listed in Appendix A to this Annex shall be designated “Specially Protected Species”, and shall be accorded special protection by the Parties.

5. A permit shall not be issued to take a Specially Protected Species unless the taking:
  - (a) is for a compelling scientific purpose;
  - (b) will not jeopardize the survival or recovery of that species or local population; and
  - (c) uses non-lethal techniques where appropriate.
6. All taking of native mammals and birds shall be done in the manner that involves the least degree of pain and suffering practicable.

#### ARTICLE 4

##### *INTRODUCTION OF NON-NATIVE SPECIES, PARASITES AND DISEASES*

1. No species of animal or plant not native to the Antarctic Treaty area shall be introduced onto land or ice shelves, or into water in the Antarctic Treaty area except in accordance with a permit.
2. Dogs shall not be introduced onto land or ice shelves and dogs currently in those areas shall be removed by April 1, 1994.
3. Permits under paragraph 1 above shall be issued to allow the importation only of the animals and plants listed in Appendix B to this Annex and shall specify the species, numbers and, if appropriate, age and sex and precautions to be taken to prevent escape or contact with native fauna and flora.
4. Any plant or animal for which a permit has been issued in accordance with paragraphs 1 and 3 above, shall, prior to expiration of the permit, be removed from the Antarctic Treaty area or be disposed of by incineration or equally effective means that eliminates risk to native fauna or flora. The permit shall specify this obligation. Any other plant or animal introduced into the Antarctic Treaty area not native to that area, including any progeny, shall be removed or disposed of, by incineration or by equally effective means, so as to be rendered sterile, unless it is determined that they pose no risk to native flora or fauna.
5. Nothing in this Article shall apply to the importation of food into the Antarctic Treaty area provided that no live animals are imported for this purpose and all plants and animal parts and products are kept under carefully controlled conditions and disposed of in accordance with Annex III to the Protocol and Appendix C to this Annex.

6. Each Party shall require that precautions, including those listed in Appendix C to this Annex, be taken to prevent the introduction of micro-organisms (e.g., viruses, bacteria, parasites, yeasts, fungi) not present in the native fauna and flora.

ARTICLE 5

*INFORMATION*

Each Party shall prepare and make available information setting forth, in particular, prohibited activities and providing lists of Specially Protected Species and relevant Protected Areas to all those persons present in or intending to enter the Antarctic Treaty area with a view to ensuring that such persons understand and observe the provisions of this Annex.

ARTICLE 6

*EXCHANGE OF INFORMATION*

1. The Parties shall make arrangements for:
  - (a) collecting and exchanging records (including records of permits) and statistics concerning the numbers or quantities of each species of native mammal, bird or plant taken annually in the Antarctic Treaty area;
  - (b) obtaining and exchanging information as to the status of native mammals, birds, plants, and invertebrates in the Antarctic Treaty area, and the extent to which any species or population needs protection;
  - (c) establishing a common form in which this information shall be submitted by Parties in accordance with paragraph 2 below.
2. Each Party shall inform the other Parties as well as the Committee before the end of November of each year of any step taken pursuant to paragraph 1 above and of the number and nature of permits issued under this Annex in the preceding period of 1st July to 30th June.

ARTICLE 7

*RELATIONSHIP WITH OTHER AGREEMENTS OUTSIDE THE ANTARCTIC TREATY SYSTEM*

Nothing in this Annex shall derogate from the rights and obligations of Parties under the International Convention for the Regulation of Whaling.

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ARTICLE 8

*REVIEW*

The Parties shall keep under continuing review measures for the conservation of Antarctic fauna and flora, taking into account any recommendations from the Committee.

ARTICLE 9

*AMENDMENT OR MODIFICATION*

1. This Annex may be amended or modified by a measure adopted in accordance with Article IX (1) of the Antarctic Treaty. Unless the measure specifies otherwise, the amendment or modification shall be deemed to have been approved, and shall become effective, one year after the close of the Antarctic Treaty Consultative Meeting at which it was adopted, unless one or more of the Antarctic Treaty Consultative Parties notifies the Depositary, within that time period, that it wishes an extension of that period or that it is unable to approve the measure.

2. Any amendment or modification of this Annex which becomes effective in accordance with paragraph 1 above shall thereafter become effective as to any other Party when notice of approval by it has been received by the Depositary.

APPENDICES TO THE ANNEX

APPENDIX A:

*SPECIALLY PROTECTED SPECIES*

All species of the genus *Arctocephalus*, Fur Seals. *Ommatophoca rossii*, Ross Seal.

APPENDIX B:

*IMPORTATION OF ANIMALS AND PLANTS*

The following animals and plants may be imported into the Antarctic Treaty area in accordance with permits issued under Article 4 of this Annex:

- (a) domestic plants; and
- (b) laboratory animals and plants including viruses, bacteria, yeasts and fungi.

APPENDIX C:

*PRECAUTIONS TO PREVENT INTRODUCTION OF MICRO-ORGANISMS*

1. Poultry. No live poultry or other living birds shall be brought into the Antarctic Treaty area. Before dressed poultry is packaged for shipment to the Antarctic Treaty area, it shall be inspected for evidence of disease, such as Newcastle's Disease, tuberculosis, and yeast infection. Any poultry or parts not consumed shall be removed from the Antarctic Treaty area or disposed of by incineration or equivalent means that eliminates risks to native flora and fauna.
2. The importation of non-sterile soil shall be avoided to the maximum extent practicable.

ANNEX III TO THE PROTOCOL ON ENVIRONMENTAL PROTECTION  
TO THE ANTARCTIC TREATY

WASTE DISPOSAL AND WASTE MANAGEMENT

ARTICLE 1

*GENERAL OBLIGATIONS*

1. This Annex shall apply to activities undertaken in the Antarctic Treaty area pursuant to scientific research programmes, tourism and all other governmental and non-governmental activities in the Antarctic Treaty area for which advance notice is required under Article VII (5) of the Antarctic Treaty, including associated logistic support activities.
2. The amount of wastes produced or disposed of in the Antarctic Treaty area shall be reduced as far as practicable so as to minimise impact on the Antarctic environment and to minimise interference with the natural values of Antarctica, with scientific research and with other uses of Antarctica which are consistent with the Antarctic Treaty.
3. Waste storage, disposal and removal from the Antarctic Treaty area, as well as recycling and source reduction, shall be essential considerations in the planning and conduct of activities in the Antarctic Treaty area.
4. Wastes removed from the Antarctic Treaty area shall, to the maximum extent practicable, be returned to the country from which the activities generating the waste were organized or to any other country in which arrangements have been made for the disposal of such wastes in accordance with relevant international agreements.

5. Past and present waste disposal sites on land and abandoned work sites of Antarctic activities shall be cleaned up by the generator of such wastes and the user of such sites. This obligation shall not be interpreted as requiring:

- (a) the removal of any structure designated as a historic site of monument; or
- (b) the removal of any structure or waste material in circumstances where the removal by any practical option would result in greater adverse environmental impact than leaving the structure or waste material in its existing location.

## ARTICLE 2

### *WASTE DISPOSAL BY REMOVAL FROM THE ANTARCTIC TREATY AREA*

1. The following wastes, if generated after entry into force of this Annex, shall be removed from the Antarctic Treaty area by the generator of such wastes:

- (a) radio-active materials;
- (b) electrical batteries;
- (c) fuel, both liquid and solid;
- (d) wastes containing harmful levels of heavy metals or acutely toxic or harmful persistent compounds;
- (e) poly-vinyl chloride (PVC), polyurethane foam, polystyrene foam, rubber and lubricating oils, treated timbers and other products which contain additives that could produce harmful emissions if incinerated;
- (f) all other plastic wastes, except low density polyethylene containers (such as bags for storing wastes), provided that such containers shall be incinerated in accordance with Article 3 (1);
- (g) fuel drums; and
- (h) other solid, non-combustible wastes;

provided that the obligation to remove drums and solid non-combustible wastes contained in subparagraphs (g) and (h) above shall not apply in circumstances where the removal of such wastes by any practical option would result in greater adverse environmental impact than leaving them in their existing locations.

2. Liquid wastes which are not covered by paragraph 1 above and sewage and domestic liquid wastes, shall, to the maximum extent practicable, be removed from the Antarctic Treaty area by the generator of such wastes.



3. The following wastes shall be removed from the Antarctic Treaty area by the generator of such wastes, unless incinerated, autoclaved or otherwise treated to be made sterile:

- (a) residues of carcasses of imported animals;
- (b) laboratory culture of micro-organisms and plant pathogens; and
- (c) introduced avian products.

### ARTICLE 3

#### *WASTE DISPOSAL BY INCINERATION*

1. Subject to paragraph 2 below, combustible wastes, other than those referred to in Article 2 (1), which are not removed from the Antarctic Treaty area shall be burnt in incinerators which to the maximum extent practicable reduce harmful emissions. Any emission standards and equipment guidelines which may be recommended by, inter alia, the Committee and the Scientific Committee on Antarctic Research shall be taken into account. The solid residue of such incineration shall be removed from the Antarctic Treaty area.

2. All open burning of wastes shall be phased out as soon as practicable, but no later than the end of the 1998/1999 season. Pending the completion of such phase-out, when it is necessary to dispose of wastes by open burning, allowance shall be made for the wind direction and speed and the type of wastes to be burnt to limit particulate deposition and to avoid such deposition over areas of special biological, scientific, historic, aesthetic or wilderness significance including, in particular, areas accorded protection under the Antarctic Treaty.

### ARTICLE 4

#### *OTHER WASTE DISPOSAL ON LAND*

1. Wastes not removed or disposed of in accordance with Articles 2 and 3 shall not be disposed of onto ice-free areas or into fresh water systems.

2. Sewage, domestic liquid wastes and other liquid wastes not removed from the Antarctic Treaty area in accordance with Article 2, shall, to the maximum extent practicable, not be disposed of onto sea ice, ice shelves or the grounded ice-sheet, provided that such wastes which are generated by stations located inland on ice shelves or on the grounded ice-sheet may be disposed of in deep ice pits where such disposal is the only practicable option. Such pits shall not be located on known ice-flow lines which terminate at ice-free areas or in areas of high ablation.

3. Wastes generated at field camps shall, to the maximum extent practicable, be removed by the generator of such wastes to supporting stations or ships for disposal in accordance with this Annex.

ARTICLE 5

*DISPOSAL OF WASTE IN THE SEA*

1. Sewage and domestic liquid wastes may be discharged directly into the sea, taking into account the assimilative capacity of the receiving marine environment and provided that:

- (a) such discharge is located, wherever practicable, where conditions exist for initial dilution and rapid dispersal; and
- (b) large quantities of such wastes (generated in a station where the average weekly occupancy over the austral summer is approximately 30 individuals or more) shall be treated at least by maceration.

2. The by-product of sewerage treatment by the Rotary Biological Contacter process or similar processes may be disposed of into the sea provided that such disposal does not adversely affect the local environment, and provided also that any such disposal at sea shall be in accordance with Annex IV to the Protocol.

ARTICLE 6

*STORAGE OF WASTE*

All wastes to be removed from the Antarctic Treaty area, or otherwise disposed of, shall be stored in such a way as to prevent their dispersal into the environment.

ARTICLE 7

*PROHIBITED PRODUCTS*

No polychlorinated biphenyls (PCBs), non-sterile soil, polystyrene beads, chips or similar forms of packaging, or pesticides (other than those required for scientific, medical or hygiene purposes) shall be introduced onto land or ice shelves or into water in the Antarctic Treaty area.

ARTICLE 8

*WASTE MANAGEMENT PLANNING*

1. Each Party which itself conducts activities in the Antarctic Treaty area shall, in respect of those activities, establish a waste disposal classification system as a basis for recording wastes and to facilitate studies aimed at evaluating the environmental impacts of scientific activity and associated logistic support. To that end, wastes produced shall be classified as:

- (a) sewage and domestic liquid wastes (Group 1);
- (b) other liquid wastes and chemicals, including fuels and lubricants (Group 2);
- (c) solids to be combusted (Group 3);
- (d) other solid wastes (Group 4); and
- (e) radioactive material (Group 5).

2. In order to reduce further the impact of waste on the Antarctic environment, each such Party shall prepare and annually review and update its waste management plans (including waste reduction, storage and disposal), specifying for each fixed site, for field camps generally, and for each ship (other than small boats that are part of the operations of fixed sites or of ships and taking into account existing management plans for ships):

- (a) programmes for cleaning up existing waste disposal sites and abandoned work sites;
- (b) current and planned waste management arrangements, including final disposal;
- (c) current and planned arrangements for analysing the environmental effects of waste and waste management; and
- (d) other efforts to minimise any environmental effects of wastes and waste management.

3. Each such Party shall, as far as is practicable, also prepare an inventory of locations of past activities (such as traverses, fuel depots, field bases, crashed aircraft) before the information is lost, so that such locations can be taken into account in planning future scientific programmes (such as snow chemistry, pollutants in lichens or ice core drilling).

ARTICLE 9

*CIRCULATION AND REVIEW OF WASTE MANAGEMENT PLANS*

1. The waste management plans prepared in accordance with Article 8, reports on their implementation, and the inventories referred to in Article 8 (3), shall be included in the annual exchanges of information in accordance with Articles III and VII of the Antarctic Treaty and related Recommendations under Article IX of the Antarctic Treaty.
2. Each Party shall send copies of its waste management plans, and reports on their implementation and review, to the Committee.
3. The Committee may review waste management plans and reports thereon and may offer comments, including suggestions for minimising impacts and modifications and improvement to the plans, for the consideration of the Parties.
4. The Parties may exchange information and provide advice on, inter alia, available low waste technologies, reconversion of existing installations, special requirements for effluents, and appropriate disposal and discharge methods.

ARTICLE 10

*MANAGEMENT PRACTICES*

Each Party shall:

- (a) designate a waste management official to develop and monitor waste management plans; in the field, this responsibility shall be delegated to an appropriate person at each site;
- (b) ensure that members of its expeditions receive training designed to limit the impact of its operations on the Antarctic environment and to inform them of requirements of this Annex; and
- (c) discourage the use of poly-vinyl chloride (PVC) products and ensure that its expeditions to the Antarctic Treaty area are advised of any PVC products they may introduce into that area in order that these products may be removed subsequently in accordance with this Annex.

ARTICLE 11

*REVIEW*

This Annex shall be subject to regular review in order to ensure that it is updated to reflect improvement in waste disposal technology and procedures and to ensure thereby maximum protection of the Antarctic environment.

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ARTICLE 12

*CASES OF EMERGENCY*

1. This Annex shall not apply in cases of emergency relating to the safety of human life or of ships, aircraft or equipment and facilities of high value or the protection of the environment.
2. Notice of activities undertaken in cases of emergency shall be circulated immediately to all Parties and to the Committee.

ARTICLE 13

*AMENDMENT OR MODIFICATION*

1. This Annex may be amended or modified by a measure adopted in accordance with Article IX (1) of the Antarctic Treaty. Unless the measure specifies otherwise, the amendment or modification shall be deemed to have been approved, and shall become effective, one year after the close of the Antarctic Treaty Consultative Meeting at which it was adopted, unless one or more of the Antarctic Treaty Consultative Parties notifies the Depositary, within that time period, that it wishes an extension of that period or that it is unable to approve the amendment.
2. Any amendment or modification of this Annex which becomes effective in accordance with paragraph 1 above shall thereafter become effective as to any other Party when notice of approval by it has been received by the Depositary.

ANNEX V TO THE PROTOCOL ON ENVIRONMENTAL PROTECTION  
TO THE ANTARCTIC TREATY

AREA PROTECTION AND MANAGEMENT

ARTICLE 1

DEFINITIONS

For the purposes of this Annex:

- a) “appropriate authority” means any person or agency authorised by a Party to issue permits under this Annex;
- b) “permit” means a formal permission in writing issued by an appropriate authority;

- c) “Management Plan” means a plan to manage the activities and protect the special value or values in an Antarctic Specially Protected Area or an Antarctic Specially Managed Area.

## ARTICLE 2

### OBJECTIVES

For the purposes set out in this Annex, any area, including any marine area, may be designated as an Antarctic Specially Protected Area or an Antarctic Specially Managed Area. Activities in those Areas shall be prohibited, restricted or managed in accordance with Management Plans adopted under the provisions of this Annex.

## ARTICLE 3

### ANTARCTIC SPECIALLY PROTECTED AREAS

1. Any area, including any marine area, may be designated as an Antarctic Specially Protected Area to protect outstanding environmental, scientific, historic, aesthetic or wilderness values, any combination of those values, or ongoing or planned scientific research.
  2. Parties shall seek to identify, within a systematic environmental-geographical framework, and to include in the series of Antarctic Specially Protected Areas:
    - (a) areas kept inviolate from human interference so that future comparisons may be possible with localities that have been affected by human activities;
    - (b) representative examples of major terrestrial, including glacial and aquatic, ecosystems and marine ecosystems;
    - (c) areas with important or unusual assemblages of species, including major colonies of breeding native birds or mammals;
    - (d) the type locality or only known habitat of any species;
    - (e) areas of particular interest to ongoing or planned scientific research;
    - (f) examples of outstanding geological, glaciological or geomorphological features;
    - (g) areas of outstanding aesthetic and wilderness value;
    - (h) sites or monuments of recognised historic value; and
    - (i) such other areas as may be appropriate to protect the values set out in paragraph 1 above.
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3. Specially Protected Areas and Sites of Special Scientific Interest designated as such by past Antarctic Treaty Consultative Meetings are hereby designated as Antarctic Specially Protected Areas and shall be renamed and renumbered accordingly.
4. Entry into an Antarctic Specially Protected Area shall be prohibited except in accordance with a permit issued under Article 7.

#### ARTICLE 4

##### ANTARCTIC SPECIALLY MANAGED AREAS

1. Any area, including any marine area, where activities are being conducted or may in the future be conducted, may be designated as an Antarctic Specially Managed Area to assist in the planning and co-ordination of activities, avoid possible conflicts, improve co-operation between Parties or minimise environmental impacts.
2. Antarctic Specially Managed Areas may include:
  - (a) areas where activities pose risks of mutual interference or cumulative environmental impacts; and
  - (b) sites or monuments of recognised historic value.
3. Entry into an Antarctic Specially Managed Area shall not require a permit.
4. Notwithstanding paragraph 3 above, an Antarctic Specially Managed Area may contain one or more Antarctic Specially Protected Areas, entry into which shall be prohibited except in accordance with a permit issued under Article 7.

#### ARTICLE 5

##### MANAGEMENT PLANS

1. Any Party, the Committee, the Scientific Committee for the Antarctic Research or the Commission for the Conservation of Antarctic Marine Living Resources may propose an area for designation as an Antarctic Specially Protected Area or an Antarctic Specially Managed Area by submitting a proposed Management Plan to the Antarctic Treaty Consultative Meeting.
  2. The area proposed for designation shall be of sufficient size to protect the values for which the special protection or management is required.
  3. Proposed Management Plans shall include, as appropriate:
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- (a) a description of the value or values for which special protection or management is required;
  - (b) a statement of the aims and objectives of the Management Plan for the protection or management of those values;
  - (c) management activities which are to be undertaken to protect the values for which special protection or management is required;
  - (d) a period of designation, if any;
  - (e) a description of the area, including:
    - (i) the geographical co-ordinates, boundary markers and natural features that delineate the area;
    - (ii) access to the area by land, sea or air including marine approaches and anchorages, pedestrian and vehicular routes within the area, and aircraft routes and landing areas;
    - (iii) the location of structures, including scientific stations, research or refuge facilities, both within the area and near to it; and
    - (iv) the location in or near the area of other Antarctic Specially Protected Areas or Antarctic Specially Managed Areas designated under this Annex, or other protected areas designated in accordance with measures adopted under other components of the Antarctic Treaty System;
  - (f) the identification of zones within the area, in which activities are to be prohibited, restricted or managed for the purpose of achieving the aims and objectives referred to in subparagraph (b) above;
  - (g) maps and photographs that show clearly the boundary of the area in relation to surrounding features and key features within the area;
  - (h) supporting documentation;
  - (i) in respect of an area proposed for designation as an Antarctic Specially Protected Area, a clear description of the conditions under which permits may be granted by the appropriate authority regarding:
    - (i) access to and movement within or over the area;
    - (ii) activities which are or may be conducted within the area, including restrictions on time and place;
    - (iii) the installation, modification, or removal of structures;
    - (iv) the location of field camps;
    - (v) restrictions on materials and organisms which may be brought into the area;
    - (vi) the taking of or harmful interference with native flora and fauna;
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- (vii) the collection or removal of anything not brought into the area by the permit-holder;
- (viii) the disposal of waste;
- (ix) measures that may be necessary to ensure that the aims and objectives of the Management Plan can continue to be met; and
- (x) requirements for reports to be made to the appropriate authority regarding visits to the area;
- (j) in respect of an area proposed for designation as an Antarctic Specially Managed Area, a code of conduct regarding:
  - (i) access to and movement within or over the area;
  - (ii) activities which are or may be conducted within the area, including restrictions on time and place;
  - (iii) the installation, modification, or removal of structures;
  - (iv) the location of field camps;
  - (v) the taking of or harmful interference with native flora and fauna;
  - (vi) the collection or removal of anything not brought into the area by the visitor;
  - (vii) the disposal of waste; and
  - (viii) any requirements for reports to be made to the appropriate authority regarding visits to the area; and
- (k) provisions relating to the circumstances in which Parties should seek to exchange information in advance of activities which they propose to conduct.

## ARTICLE 6

### DESIGNATION PROCEDURES

1. Proposed Management Plans shall be forwarded to the Committee, the Scientific Committee on Antarctic Research and, as appropriate, to the Commission for the Conservation of Antarctic Marine Living Resources. In formulating its advice to the Antarctic Treaty Consultative Meeting, the Committee shall take into account any comments provided by the Scientific Committee on Antarctic Research and, as appropriate, by the Commission for the Conservation of Antarctic Marine Living Resources. Thereafter Management Plans may be approved by the Antarctic Treaty Consultative Parties by a measure adopted at an Antarctic Treaty Consultative Meeting in accordance with Article IX (1) of the Antarctic Treaty. Unless the measure specifies otherwise, the Plan shall be deemed to have been approved 90 days

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after the close of the Antarctic Treaty Consultative Meeting at which it was adopted, unless one or more of the Consultative Parties notifies the depositary, within that time period, that it wishes an extension of that period or is unable to approve the measure.

2. Having regard to the provisions of Articles 4 and 5 of the Protocol, no marine area shall be designated as an Antarctic Specially Protected Area or an Antarctic Specially Managed Area without the prior approval of the Commission for the Conservation of Antarctic Marine Living Resources.
3. Designation of an Antarctic Specially Protected Area or an Antarctic Specially Managed Area shall be for an indefinite period unless the Management Plan provides otherwise. A review of a Management Plan shall be initiated at least every five years. The Plan shall be updated as necessary.
4. Management Plans may be amended or revoked in accordance with paragraph 1 above.
5. Upon approval Management Plans shall be circulated promptly by the Depositary to all Parties. The Depositary shall maintain a record of all currently approved Management Plans.

#### ARTICLE 7

##### PERMITS

1. Each Party shall appoint an appropriate authority to issue permits to enter or engage in activities within an Antarctic Specially Protected Area in accordance with the requirements of the Management Plan relating to that Area. The permit shall be accompanied by the relevant sections of the Management Plan and shall specify the extent and location of the Area, the authorised activities and when, where and by whom the activities are authorised and any other conditions imposed by the Management Plan.
2. In the case of a Specially Protected Area designated as such by past Antarctic Treaty Consultative Meetings which does not have a Management Plan, the appropriate authority may issue a permit for a compelling scientific purpose which cannot be served elsewhere and which will not jeopardise the natural ecological system in that Area.
3. Each Party shall require a permit-holder to carry a copy of the permit while in the Antarctic Specially Protected Area concerned.

#### ARTICLE 8

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### HISTORIC SITES AND MONUMENTS

1. Sites or monuments of recognised historic value which have been designated as Antarctic Specially Protected Areas or Antarctic Specially Managed Areas, or which are located within such Areas, shall be listed as Historic Sites and Monuments.
2. Any Party may propose a site or monument of recognised historic value which has not been designated as an Antarctic Specially Protected Area or an Antarctic Specially Managed Area, or which is not located within such an Area, for listing as a Historic Site or Monument. The proposal for listing may be approved by the Antarctic Treaty Consultative Parties by a measure adopted at an Antarctic Treaty Consultative Meeting in accordance with Article IX (1) of the Antarctic Treaty. Unless the measure specifies otherwise, the proposal shall be deemed to have been approved 90 days after the close of the Antarctic Treaty Consultative Meeting at which it was adopted, unless one or more of the Consultative Parties notifies the Depositary, within that time period, that it wishes an extension of that period or is unable to approve the measure.
3. Existing Historic Sites and Monuments which have been listed as such by previous Antarctic Treaty Consultative Meetings shall be included in the list of Historic Sites and Monuments under this Article.
4. Listed Historic Sites and Monuments shall not be damaged, removed or destroyed.
5. The list of Historic Sites and Monuments may be amended in accordance with paragraph 2 above. The Depositary shall maintain a list of current Historic Sites and Monuments.

### ARTICLE 9

#### INFORMATION AND PUBLICITY

1. With a view to ensuring that all persons visiting or proposing to visit Antarctica understand and observe the provisions of this Annex, each Party shall make available information setting forth, in particular:
  - (a) the location of Antarctic Specially Protected Areas and Antarctic Specially Managed Areas;
  - (b) listing and maps of those Areas;
  - (c) the Management Plans, including listings of prohibitions relevant to each Area;

- (d) the location of Historic Sites and Monuments and any relevant prohibition or restriction.
2. Each Party shall ensure that the location and, if possible, the limits, of Antarctic Specially Protected Areas, Antarctic Specially Managed Areas and Historic Sites and Monuments are shown on its topographic maps, hydrographic charts and in other relevant publications.
3. Parties shall co-operate to ensure that, where appropriate, the boundaries of Antarctic Specially Protected Areas, Antarctic Specially Managed Areas and Historic Sites and Monuments are suitably marked on the site.

#### ARTICLE 10

##### EXCHANGE OF INFORMATION

1. The Parties shall make arrangements for:
    - (a) collecting and exchanging records, including records of permits and reports of visits, including inspection visits, to Antarctic Specially Protected Areas and reports of inspection visits to Antarctic Specially Managed Areas;
    - (b) obtaining and exchanging information on any significant change or damage to any Antarctic Specially Managed Area, Antarctic Specially Protected Area or Historic Site or Monument; and
    - (c) establishing common forms in which records and information shall be submitted by Parties in accordance with paragraph 2 below.
  2. Each Party shall inform the other Parties and the Committee before the end of November of each year of the number and nature of permits issued under this Annex in the preceding period of 1st July to 30th June.
  3. Each Party conducting, funding or authorising research or other activities in Antarctic Specially Protected Areas or Antarctic Specially Managed Areas shall maintain a record of such activities and in the annual exchange of information in accordance with the Treaty shall provide summary descriptions of the activities conducted by persons subject to its jurisdiction in such areas in the preceding year.
  4. Each Party shall inform the other Parties and the Committee before the end of November each year of measures it has taken to implement this Annex, including any site inspections and any steps it has taken to address instances of activities in contravention of the provisions of the approved Management Plan for an Antarctic Specially Protected Area or Antarctic Specially Managed Area.
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ARTICLE 11

CASES OF EMERGENCY

1. The restrictions laid down and authorised by this Annex shall not apply in cases of emergency involving safety of human life or of ships, aircraft, or equipment and facilities of high value or the protection of the environment.
2. Notice of activities undertaken in cases of emergency shall be circulated immediately to all Parties and to the Committee.

ARTICLE 12

AMENDMENT OR MODIFICATION

1. This Annex may be amended or modified by a measure adopted in accordance with Article IX (1) of the Antarctic Treaty. Unless the measure specifies otherwise, the amendment or modification shall be deemed to have been approved, and shall become effective, one year after the close of the Antarctic Treaty Consultative Meeting at which it was adopted, unless one or more of the Antarctic Treaty Consultative Parties notifies the Depositary, within that time period, that it wishes an extension of that period or that it is unable to approve the measure.
2. Any amendment or modification of this Annex which becomes effective in accordance with paragraph 1 above shall thereafter become effective as to any other Party when notice of approval by it has been received by the Depositary.

## Endnotes

Endnote 1—About the endnotes

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## Endnotes

### Endnote 1—About the endnotes

The endnotes provide details of the history of this legislation and its provisions. The following endnotes are included in each compilation:

- Endnote 1—About the endnotes
- Endnote 2—Abbreviation key
- Endnote 3—Legislation history
- Endnote 4—Amendment history
- Endnote 5—Uncommenced amendments
- Endnote 6—Modifications
- Endnote 7—Misdescribed amendments
- Endnote 8—Miscellaneous

If there is no information under a particular endnote, the word “none” will appear in square brackets after the endnote heading.

### Abbreviation key—Endnote 2

The abbreviation key in this endnote sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended the compiled law. The information includes commencement information for amending laws and details of application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision level. It also includes information about any provisions that have expired or otherwise ceased to have effect in accordance with a provision of the compiled law.

### Uncommenced amendments—Endnote 5

The effect of uncommenced amendments is not reflected in the text of the compiled law, but the text of the amendments is included in endnote 5.

**Modifications—Endnote 6**

If the compiled law is affected by a modification that is in force, details of the modification are included in endnote 6.

**Misdescribed amendments—Endnote 7**

An amendment is a misdescribed amendment if the effect of the amendment cannot be incorporated into the text of the compilation. Any misdescribed amendment is included in endnote 7.

**Miscellaneous—Endnote 8**

Endnote 8 includes any additional information that may be helpful for a reader of the compilation.

## Endnotes

### Endnote 2—Abbreviation key

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#### Endnote 2—Abbreviation key

ad = added or inserted	pres = present
am = amended	prev = previous
c = clause(s)	(prev) = previously
Ch = Chapter(s)	Pt = Part(s)
def = definition(s)	r = regulation(s)/rule(s)
Dict = Dictionary	Reg = Regulation/Regulations
disallowed = disallowed by Parliament	reloc = relocated
Div = Division(s)	renum = renumbered
exp = expired or ceased to have effect	rep = repealed
hdg = heading(s)	rs = repealed and substituted
LI = Legislative Instrument	s = section(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sch = Schedule(s)
mod = modified/modification	Sdiv = Subdivision(s)
No = Number(s)	SLI = Select Legislative Instrument
o = order(s)	SR = Statutory Rules
Ord = Ordinance	Sub-Ch = Sub-Chapter(s)
orig = original	SubPt = Subpart(s)
par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)	



## Endnote 3—Legislation history

## Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Antarctic Treaty (Environment Protection) Act 1980	103, 1980	6 June 1980	ss. 16–21: 6 Dec 1980 Remainder: Royal Assent	
Statute Law (Miscellaneous Provisions) Act (No. 1) 1985	65, 1985	5 June 1985	s. 3: 8 Jan 1987 ( <i>see Gazette</i> 1986, No. S660) ( <i>a</i> )	—
Statute Law (Miscellaneous Provisions) Act (No. 1) 1986	76, 1986	24 June 1986	s. 3: Royal Assent ( <i>b</i> )	s. 9
Civil Aviation Act 1988	63, 1988	15 June 1988	Part III (ss. 17–32), s. 98 and Parts IX, X (ss. 99–103): 1 July 1988 ( <i>see Gazette</i> 1988, No. S189) Remainder: Royal Assent	s. 100(1)–(3)
Antarctic (Environment Protection) Legislation Amendment Act 1992	156, 1992	11 Dec 1992	ss. 1, 2, 29, 30: 11 Dec 1992 ss. 4(2), 6(3), 10, 11, 12(3)(a), 13(5), 13(6), 17(4), 19(2), 25(2): 24 Nov 2002 ss. 6(2), 9, 12(3)(b), 13(3), 13(4), 17(3), 18, 27, 31: 1 Mar 1998 ( <i>see Gazette</i> 1998, No. GN8) ss. 12(2), 17(2): 1 Apr 1994 Remainder: 11 June 1993	s. 13(2), (4), (6)

## Endnotes

### Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Schedule 2 (item 14): <i>(c)</i> Schedule 2 (item 15): <i>(c)</i> Schedule 2 (item 16): <i>(c)</i> Schedule 5 (items 13–15): Royal Assent <i>(c)</i>	—
Environmental Reform (Consequential Provisions) Act 1999	92, 1999	16 July 1999	Schedule 4 (items 38, 39): 16 July 2000 <i>(d)</i>	—
Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000	137, 2000	24 Nov 2000	ss. 1–3, Schedule 1 (items 1, 4, 6, 7, 9–11, 32): Royal Assent Remainder: 24 May 2001	Sch. 2 (items 418, 419)
Environment and Heritage Legislation Amendment (Application of Criminal Code) Act 2001	15, 2001	22 Mar 2001	s. 4 and Schedule 1 (items 22–27, 31–39): 24 May 2001 <i>(e)</i> Schedule 1 (items 28–30): 24 Nov 2002 <i>(e)</i>	s. 4
Environment and Heritage Legislation Amendment (Antarctic Seals and Other Measures) Act 2006	164, 2006	11 Dec 2006	Schedule 1: 11 June 2007	Sch. 1 (items 89–92)
Crimes Legislation Amendment (Serious and Organised Crime) Act (No. 2) 2010	4, 2010	19 Feb 2010	Schedule 11 (item 4): 20 Feb 2010	—
Antarctic Treaty (Environment Protection) Amendment Act 2010	23, 2010	25 Mar 2010	Schedule 1: [ <i>see</i> Endnote 5] Remainder: Royal Assent	Sch. 1 (item 33)
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Schedule 2 (item 66) and Schedule 3 (items 10, 11): 27 Dec 2011	Sch. 3 (items 10, 11)

## Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Antarctic Treaty (Environment Protection) Amendment Act 2012	90, 2012	28 June 2012	Schedule 1 (items 1–5): [see Endnote 5] Schedule 1 (items 6–11): [see (f) and Endnote 5] Schedule 2 (items 1–9): [see Endnote 5] Schedule 2 (items 10–30, 32–37): [see (f) and Endnote 5] Schedule 2 (item 31): [see (f) and Endnote 5] Schedule 3: [see Endnote 5] Schedule 4: 29 June 2012 Remainder: Royal Assent	Sch. 1 (items 10, 11) and Sch. 2 (items 32–37)
Federal Circuit Court of Australia (Consequential Amendments) Act 2013	13, 2013	14 Mar 2013	Schedule 1 (item 27): 12 Apr 2013 (see s. 2(1))	—
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 8 (item 3): 24 June 2014	—

- (a) The *Antarctic Treaty (Environment Protection) Act 1980* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1985*, subsection 2(4) of which provides as follows:
- (4) The amendments of the *Antarctic Treaty (Environment Protection) Act 1980* made by this Act shall come into operation on a day to be fixed by Proclamation.
- (b) The *Antarctic Treaty (Environment Protection) Act 1980* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1986*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.

## Endnotes

### Endnote 3—Legislation history

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- (c) The *Antarctic Treaty (Environment Protection) Act 1980* was amended by Schedule 2 (items 14–16) and Schedule 5 (items 13–15) only of the *Statute Law Revision Act 1996*, subsections 2(1) and (2) of which provide as follows:
- (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.
  - (2) Each item in Schedule 2 commences or is taken to have commenced (as the case requires) at the time specified in the note at the end of the item.  
Item 14 is taken to have commenced immediately after the commencement of subsection 12(2) of the *Antarctic (Environment Protection) Legislation Amendment Act 1992*.  
Subsection 12(2) commenced on 1 April 1994.  
Item 15 is taken to have commenced immediately after the commencement of subsection 19(2) of the *Antarctic (Environment Protection) Legislation Amendment Act 1992*.  
Item 16 is taken to have commenced immediately after the commencement of section 23 of the *Antarctic (Environment Protection) Legislation Amendment Act 1992*.  
Section 23 commenced on 11 June 1993.
- (d) The *Antarctic Treaty (Environment Protection) Act 1980* was amended by Schedule 4 (items 38 and 39) only of the *Environmental Reform (Consequential Provisions) Act 1999*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences when the *Environment Protection and Biodiversity Conservation Act 1999* commences.
- (e) The *Antarctic Treaty (Environment Protection) Act 1980* was amended by Schedule 1 (items 22–39) only of the *Environment and Heritage Legislation Amendment (Application of Criminal Code) Act 2001*, subsections 2(1)(c) and (3)(b) of which provide as follows:
- (1) Subject to this section, this Act commences on the latest of the following days:
    - (c) the day on which item 15 of Schedule 1 to the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000* commences.
  - (3) Items 28, 29 and 30 of Schedule 1 to this Act commence at the later of the following times:
    - (b) the commencement of subsection 17(4) of the *Antarctic (Environment Protection) Legislation Amendment Act 1992*.
- (f) Subsection 2(1) (items 3, 5, 6 and 9) of the *Antarctic Treaty (Environment Protection) Amendment Act 2012* provides as follows:

## Endnote 3—Legislation history

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
3. Schedule 1, Parts 2 and 3	<p>The later of:</p> <p>(a) immediately after the commencement of the provision(s) covered by table item 9; and</p> <p>(b) immediately after Measure 4 (2004), adopted by the XXVIIth Antarctic Treaty Consultative Meeting at Cape Town on 4 June 2004, comes into force for Australia.</p> <p>However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.</p> <p>The Minister must announce by notice in the <i>Gazette</i> the day the Measure comes into force for Australia.</p>	<p>[see Endnote 5]</p> <p>(paragraph (b) applies)</p>
5. Schedule 2, Part 2	<p>The later of:</p> <p>(a) immediately after the commencement of the provision(s) covered by table item 9; and</p> <p>(b) immediately after Annex VI to the Madrid Protocol, attached to Measure 1 (2005) adopted by the XXVIIIth Antarctic Treaty Consultative Meeting at Stockholm on 17 June 2005, comes into force for Australia.</p> <p>However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.</p> <p>The Minister must announce by notice in the <i>Gazette</i> the day the Annex comes into force for Australia.</p>	<p>[see Endnote 5]</p> <p>(paragraph (b) applies)</p>

## Endnotes

### Endnote 3—Legislation history

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
6. Schedule 2, Part 3	<p>The later of:</p> <p>(a) immediately after the commencement of the provision(s) covered by table item 3; and</p> <p>(b) the start of the day Annex VI to the Madrid Protocol, attached to Measure 1 (2005) adopted by the XXVIIIth Antarctic Treaty Consultative Meeting at Stockholm on 17 June 2005, comes into force for Australia.</p> <p>However, the provision(s) do not commence at all unless both of the events mentioned in paragraphs (a) and (b) occur.</p> <p>The Minister must announce by notice in the <i>Gazette</i> the day the Annex comes into force for Australia.</p>	[see Endnote 5]
9. Schedule 4	The day after this Act receives the Royal Assent.	29 June 2012

## Endnote 4—Amendment history

## Endnote 4—Amendment history

Provision affected	How affected
Title .....	rs. No. 90, 2012
Preamble.....	am. No. 65, 1985; No. 156, 1992; No. 90, 2012
<b>Part 1</b>	
Heading to Part 1 .....	ad. No. 156, 1992
s. 3 .....	am. No. 65, 1985; No. 63, 1988; No. 156, 1992; No. 164, 2006; No. 4, 2010; No. 46, 2011; No. 90, 2012; No. 13, 2013; No 31, 2014
s. 6.....	am. No. 156, 1992
	rs. No. 90, 2012
s. 6A.....	ad. No. 15, 2001
s. 6B .....	ad. No. 90, 2012
s. 7.....	am. No. 65, 1985; No. 156, 1992; No. 92, 1999
s. 7A .....	ad. No. 156, 1992
<b>Part 2</b>	
Heading to Part 2.....	ad. No. 156, 1992
s. 7B .....	ad. No. 156, 1992
	rep. No. 156, 1992
s. 7C .....	ad. No. 156, 1992
	am. No. 164, 2006
s. 8.....	am. No. 156, 1992
	rs. No. 156, 1992
s. 8A.....	ad. No. 156, 1992
s. 9.....	am. No. 156, 1992; No. 43, 1996; No. 164, 2006
s. 9A.....	ad. No. 164, 2006
s. 10.....	am. No. 156, 1992; No. 164, 2006
s. 11.....	am. No. 156, 1992; No. 43, 1996
s. 12.....	am. No. 156, 1992; No. 164, 2006
<b>Part 3</b>	
Part 3 .....	ad. No. 156, 1992
ss. 12A–12M.....	ad. No. 156, 1992
ss. 12N, 12P.....	ad. No. 156, 1992

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
	am. No. 164, 2006
s. 12PA.....	ad. No. 164, 2006
s. 12Q.....	ad. No. 156, 1992
<b>Part 4</b>	
Heading to Part 4.....	ad. No. 156, 1992
s. 15.....	am. No. 43, 1996; No. 164, 2006
s. 16.....	am. No. 43, 1996
s. 17.....	am. No. 156, 1992; No. 43, 1996; No. 15, 2001; No. 164, 2006; No. 90, 2012
s. 18.....	am. No. 43, 1996; No. 90, 2012
<b>Part 5</b>	
Heading to Part 5.....	ad. No. 156, 1992
	rs. No. 90, 2012
s. 19.....	am. No. 65, 1985; No. 76, 1986; No. 156, 1992; No. 43, 1996; No. 15, 2001; No. 164, 2006
ss. 19AA, 19AB.....	ad. No. 164, 2006
ss. 19A–19C.....	ad. No. 156, 1992
	am. No. 164, 2006
s. 20.....	am. No. 43, 1996
	rs. No. 15, 2001
	am. No. 164, 2006
s. 21.....	am. No. 156, 1992; No. 43, 1996; No. 15, 2001; No. 164, 2006
ss. 21AA, 21AB.....	ad. No. 164, 2006
s. 21A.....	ad. No. 156, 1992
	am. No. 15, 2001; No. 164, 2006
Note to s. 21A(4).....	ad. No. 15, 2001
<b>Part 5A</b>	
Part 5A.....	ad. No. 90, 2012
<b>Division 1</b>	
s. 22.....	am. No. 43, 1996
	rep. No. 137, 2000
	ad. No. 90, 2012
s. 22A.....	ad. No. 90, 2012



## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
s. 22B .....	ad. No. 90, 2012
s. 22C .....	ad. No. 90, 2012
s. 22D .....	ad. No. 90, 2012
s. 22E .....	ad. No. 90, 2012
s. 22F .....	ad. No. 90, 2012
<b>Division 2</b>	
s. 22G .....	ad. No. 90, 2012
s. 22H .....	ad. No. 90, 2012
s. 22J .....	ad. No. 90, 2012
s. 22K .....	ad. No. 90, 2012
<b>Division 3</b>	
s. 22L .....	ad. No. 90, 2012
s. 22M .....	ad. No. 90, 2012
s. 22N .....	ad. No. 90, 2012
s. 23 .....	am. No. 43, 1996 rep. No. 137, 2000
s. 24 .....	rep. No. 156, 1992
<b>Part 6</b>	
Heading to Part 6 .....	ad. No. 156, 1992
s. 27 .....	rs. No. 156, 1992 am. No. 43, 1996; No. 90, 2012
s. 28 .....	am. No. 156, 1992; No. 164, 2006
s. 29 .....	am. No. 65, 1985; No. 156, 1992; No. 164, 2006; No. 90, 2012
<b>Schedules</b>	
Heading to Schedule .....	rep. No. 156, 1992
Heading to Schedule 1 .....	ad. No. 156, 1992
Schedule .....	ad. No. 65, 1985
Schedules 2, 3 .....	ad. No. 156, 1992

**Endnote 5—Uncommenced amendments**

**Antarctic Treaty (Environment Protection) Amendment Act 2010 (No. 23, 2010)**

**Schedule 1**

**1 Subsection 3(1)**

Insert:

*organism* includes:

- (a) a living organism at any stage of its life cycle; and
- (b) an organism that was once alive, but is now dead; and
- (c) a reproductive propagule of a living organism; and
- (d) an article containing or infected by a virus or bacterium.

**2 Subsection 3(1) (definition of *specially protected species*)**

After “native bird”, insert “, native invertebrate”.

**3 Subsection 3(1) (definition of *take*)**

Repeal the definition, substitute:

*take*:

- (a) in relation to a native bird or native seal—includes catch or capture; and
- (b) in relation to native plants—means to remove or damage such quantities of the plants that their local distribution or abundance would be significantly affected; and
- (c) in relation to native invertebrates—means to remove or damage such quantities of the invertebrates that their local distribution or abundance would be significantly affected.

**4 Subsection 3(2)**

Repeal the subsection.

**5 Subsection 7C(1)**

After “native bird”, insert “, native invertebrate”.

**6 Subparagraph 10(1)(b)(ii)**

Omit “(including display in museums, zoological gardens or other educational or cultural institutions) or such other educational or cultural purposes”, substitute “(including display in museums or other educational institutions) or such other educational purposes”.

Note: The following heading to subsection 10(1) is inserted “*Permits for taking etc. native birds and native seals*”.

**7 After subparagraph 10(1)(b)(ii)**

Insert:

- (ia) if the permit relates to native birds or native seals—providing specimens for zoological gardens in cases where such specimens cannot be obtained from existing captive collections elsewhere or where there is a compelling conservation need; or

**8 Subparagraph 10(1)(b)(iv)**

After “subparagraph (ii)”, insert “or (ia)”.

**9 At the end of paragraph 10(1)(c)**

Add:

- ; and (iii) if the permit is to kill a native bird or native seal of that species—there is no suitable alternative technique to achieve the purpose for which the permit is granted.

**10 After subsection 10(1A)**

Insert:

*Permits for taking native invertebrates*

(1AA) A permit must not authorise a person to take native invertebrates unless:

- (a) the Minister is satisfied that the variety of species, the habitats essential to their existence and the balance of the natural ecological systems existing within the Antarctic will be maintained; and

## Endnotes

### Endnote 5—Uncommenced amendments

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- (b) the permit is so expressed as to ensure, as far as possible, that the taking authorised by the permit will be carried on to the extent only that it is necessary for:
  - (i) the construction and operation of scientific support facilities; or
  - (ii) providing specimens for scientific research, public education (including display in museums or other educational institutions) or such other educational purposes as the Minister thinks fit; or
  - (iii) providing specimens for zoological gardens; or
  - (iv) monitoring or conserving the environment or an historic site or monument; or
  - (v) providing for unavoidable consequences of scientific activities not authorised under subparagraph (ii) or (iii); and
- (c) in the case of a permit relating to a specially protected species:
  - (i) the permit is granted for a compelling scientific purpose; and
  - (ii) the Minister is satisfied that the activities authorised by the permit will not jeopardise the existing ecological system or the survival or recovery of that species or of the local population of that species; and
  - (iii) if the permit is to kill native invertebrates of that species—there is no suitable alternative technique to achieve the purpose for which the permit is granted.

#### **11 Subparagraph 10(1B)(b)(ii)**

Omit “(including display in museums, herbaria, botanical gardens or other educational or cultural institutions) or such other educational or cultural purposes”, substitute “(including display in museums, herbaria, botanical gardens or other educational institutions) or such other educational purposes”.

Note: The following heading to subsection 10(1B) is inserted “*Permits for gathering etc. native plants*”.

#### **12 At the end of paragraph 10(1B)(c)**

Add:

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- ; and (iii) if the permit is to kill (whether by collection or any other action) a native plant of that species—there is no suitable alternative technique to achieve the purpose for which the permit is granted.

Note: The following heading to subsection 10(1C) is inserted “*Permits for gathering etc. meteorites and rocks*”.

**13 Subsection 10(1D)**

Repeal the subsection.

**14 Paragraph 10(2)(b)**

Omit “that is not indigenous to the Antarctic”.

Note: The following heading to subsection 10(2) is inserted “*Permits to bring organisms into the Antarctic*”.

**15 Subsection 10(3)**

Repeal the subsection, substitute:

- (3) A permit must not authorise a person to bring into the Antarctic a cultivated plant that is not indigenous to the Antarctic or a reproductive propagule of such a plant other than for use under controls that ensure that it does not escape into the Antarctic environment.
- (3A) A permit must not authorise a person to bring into the Antarctic any other organism that is not indigenous to the Antarctic other than for experimental use under controls that ensure that it does not escape into the Antarctic environment.

**16 Subsection 10(4)**

Omit “an animal, plant, virus, bacterium, yeast or fungus that is not indigenous to the Antarctic and might cause harmful interference with the natural system if left unsupervised within the Antarctic”, substitute “an organism that is not indigenous to the Antarctic”.

**17 Subsection 10(5)**

Repeal the subsection, substitute:

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- (5) A permit authorising a person to bring into the Antarctic organisms that are not indigenous to the Antarctic must:
- (a) specify:
    - (i) the number of organisms to which the permit relates; and
    - (ii) the species of the organisms; and
    - (iii) a rationale justifying the introduction of the organisms; and
    - (iv) if appropriate in the case of a permit relating to animals—the age and sex of each of the animals; and
  - (b) specify as a condition of the permit that the person must take all reasonable precautions to prevent any of the organisms from escaping or coming in contact with fauna or flora.

Note: The following heading to subsection 10(6) is inserted “*Specially protected areas*”.

#### **18 Paragraph 17(1)(a)**

Omit “any animal, plant, virus, bacterium, yeast, fungus”, substitute “any organism”.

#### **19 Subsection 18(2)**

Omit “any animal, plant, virus, bacterium, yeast or fungus”, substitute “any organism”.

#### **20 Subparagraph 19(1A)(b)(i)**

Omit “, a native invertebrate”.

#### **21 Subparagraph 19(1A)(b)(ii)**

Omit “, a native invertebrate”.

#### **22 After subparagraph 19(1A)(b)(ii)**

Insert:

- (ia) causes the taking of native invertebrates or native plants in the Antarctic; or

#### **23 Subparagraph 19(1A)(b)(iii)**

Omit “, a native invertebrate”.

**24 Subparagraph 19(1A)(b)(iia)**

Omit “seal; or”, substitute “seal.”.

**25 Subparagraph 19(1A)(b)(iv)**

Repeal the subparagraph.

**26 Paragraph 19(1)(c)**

Omit “an animal, plant, virus, bacterium, yeast or fungus”, substitute “an organism”.

**27 After paragraph 19(1)(caa)**

Insert:

(cab) bring a living bird into the Antarctic; or

**28 Paragraph 19(2)(g)**

Repeal the paragraph, substitute:

- (g) cause or permit to escape from his or her control or the control of any other person an organism that is not indigenous to the Antarctic and has been brought into the Antarctic by virtue of a permit.

**29 Paragraph 19(3)(b)**

Omit “the animal (not being a live bird), plant, virus, bacterium, yeast or fungus, as the case may be,”, substitute “the organism”.

**30 After section 19AB**

Insert:

**19AC Offence relating to the accidental introduction of micro-organisms**

- (1) A person commits an offence if:
  - (a) the person brings into the Antarctic an organism or an article; and
  - (b) the person, by that conduct, brings into the Antarctic a micro-organism that is not indigenous to the Antarctic.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (2) Subsection (1) does not apply if:
- (a) the person brings the organism or article into the Antarctic for use as food; or
  - (b) the person has taken all reasonable precautions to ensure that a micro-organism that is not indigenous to the Antarctic is not brought into the Antarctic by the conduct mentioned in paragraph (1)(a); or
  - (c) the person has a permit or a recognised foreign authority to bring in the micro-organism.
- (3) Subsection (1) does not apply in relation to the conduct mentioned in paragraph (1)(a) if the conduct was done in an emergency:
- (a) to save a person from death or serious injury; or
  - (b) to secure the safety of a ship or aircraft or the safety of equipment or facilities of high value; or
  - (c) to protect the environment.

#### **19AD Offences relating to bringing food into the Antarctic**

##### *Bringing live animals into the Antarctic as food*

- (1) A person must not bring a live animal into the Antarctic for use as food.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

##### *Controls to ensure organisms brought into Antarctic as food do not escape*

- (2) If a person brings an organism into the Antarctic for use as food, the person must put controls in place that ensure that the organism does not escape into the Antarctic environment.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

##### *Poultry and food products derived from poultry*

- (3) A person commits an offence if:



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Endnote 5—Uncommenced amendments

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- (a) the person brings poultry or any other bird product that is to be used as food into the Antarctic; and
- (b) the poultry or other bird product is contaminated with disease.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (4) Subsection (3) does not apply if the person has taken all reasonable precautions to ensure that disease is not brought into the Antarctic by the conduct mentioned in paragraph (3)(a).

**19AE Offence relating to destruction of organisms brought into Antarctic without a permit**

- (1) This section applies if:
  - (a) a person brings into, or keeps in, the Antarctic an organism that is not indigenous to the Antarctic; and
  - (b) that conduct is not in accordance with a permit or recognised foreign authority (either because the person does not have one to do so or because the conduct cannot be authorised by a permit or recognised foreign authority); and
  - (c) the organism poses a risk to native fauna and flora.

- (2) The person must, as soon as is reasonably practicable after bringing the organism into the Antarctic or beginning to keep it, remove or destroy the organism and any progeny of the organism.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (3) Subsection (2) does not apply if:
  - (a) it is not feasible to remove or destroy the organism or its progeny; or
  - (b) the removal or destruction of the organism or its progeny would result in a greater adverse environmental impact than not doing so; or
  - (c) the organism is brought into or kept in the Antarctic to be used as food.
- (4) The person must, as soon as is reasonably practicable after bringing the organism into the Antarctic or beginning to keep it,

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take all reasonable steps to avoid or, if already occurring, control the consequences of the conduct mentioned in paragraph (1)(a).

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (5) Subsection (4) does not apply if the organism is brought into or kept in the Antarctic to be used as food.

### 31 Paragraphs 29(2)(f) and (g)

Omit “animals, plants, viruses, bacteria, yeasts and fungi”, substitute “organisms”.

### 32 Schedule 3 (Annex II to the Protocol on Environmental Protection to the Antarctic Treaty)

Repeal the Annex, substitute:

#### ANNEX II TO THE PROTOCOL ON ENVIRONMENTAL PROTECTION TO THE ANTARCTIC TREATY

#### CONSERVATION OF ANTARCTIC FAUNA AND FLORA

#### ARTICLE 1

#### *DEFINITIONS*

For the purposes of this Annex:

- (a) “native mammal” means any member of any species belonging to the Class Mammalia, indigenous to the Antarctic Treaty area or occurring there naturally through migrations;
- (b) “native bird” means any member, at any stage of its life cycle (including eggs), of any species of the Class Aves indigenous to the Antarctic Treaty area or occurring there naturally through migrations;
- (c) “native plant” means any member of any species of terrestrial or freshwater vegetation, including bryophytes, lichens, fungi and algae, at any stage of its life cycle (including seeds, and other propagules), indigenous to the Antarctic Treaty area;

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- (d) “native invertebrate” means any member of any species of terrestrial or freshwater invertebrate, at any stage of its life cycle, indigenous to the Antarctic Treaty area;
- (e) “appropriate authority” means any person or agency authorised by a Party to issue permits under this Annex;
- (f) “permit” means a formal permission in writing issued by an appropriate authority;
- (g) “take” or “taking” means to kill, injure, capture, handle or molest a native mammal or bird, or to remove or damage such quantities of native plants or invertebrates that their local distribution or abundance would be significantly affected;
- (h) “harmful interference” means:
  - (i) flying or landing helicopters or other aircraft in a manner that disturbs concentrations of native birds or seals;
  - (ii) using vehicles or vessels, including hovercraft and small boats, in a manner that disturbs concentrations of native birds or seals;
  - (iii) using explosives or firearms in a manner that disturbs concentrations of native birds or seals;
  - (iv) wilfully disturbing breeding or moulting native birds or concentrations of native birds or seals by persons on foot;
  - (v) significantly damaging concentrations of native terrestrial plants by landing aircraft, driving vehicles, or walking on them, or by other means; and
  - (vi) any activity that results in the significant adverse modification of habitats of any species or population of native mammal, bird, plant or invertebrate.
- (i) “International Convention for the Regulation of Whaling” means the Convention done at Washington on 2 December 1946.
- (j) “Agreement on the Conservation of Albatrosses and Petrels” means the Agreement done at Canberra on 19 June 2001.

**ARTICLE 2**

***CASES OF EMERGENCY***

1. This Annex shall not apply in cases of emergency relating to the safety of human life or of ships, aircraft, or equipment and facilities of high value, or the protection of the environment.
2. Notice of activities undertaken in cases of emergency that result in any taking or harmful interference shall be circulated immediately to all Parties and to the Committee.

**ARTICLE 3**

***PROTECTION OF NATIVE FAUNA AND FLORA***

1. Taking or harmful interference shall be prohibited, except in accordance with a permit.
2. Such permits shall specify the authorised activity, including when, where and by whom it is to be conducted and shall be issued only in the following circumstances:
  - (a) to provide specimens for scientific study or scientific information;
  - (b) to provide specimens for museums, herbaria and botanical gardens, or other educational institutions or uses;
  - (c) to provide specimens for zoological gardens but, in respect of native mammals or birds, only if such specimens cannot be obtained from existing captive collections elsewhere, or if there is a compelling conservation requirement; and
  - (d) to provide for unavoidable consequences of scientific activities not otherwise authorised under sub-paragraphs (a), (b) or (c) above, or of the construction and operation of scientific support facilities.
3. The issue of such permits shall be limited so as to ensure that:
  - (a) no more native mammals, birds, plants or invertebrates are taken than are strictly necessary to meet the purposes set forth in paragraph 2 above;
  - (b) only small numbers of native mammals or birds are killed, and in no case more are killed from local populations than can, in combination with other permitted takings, normally

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- be replaced by natural reproduction in the following season;  
and
- (c) the diversity of species, as well as the habitats essential to their existence, and the balance of the ecological systems existing within the Antarctic Treaty area are maintained.
4. Any species of native mammals, birds, plants and invertebrates listed in Appendix A to this Annex shall be designated “Specially Protected Species”, and shall be accorded special protection by the Parties.
  5. Designation of a species as a Specially Protected Species shall be undertaken according to agreed procedures and criteria adopted by the ATCM.
  6. The Committee shall review and provide advice on the criteria for proposing native mammals, birds, plants or invertebrates for designation as a Specially Protected Species.
  7. Any Party, the Committee, the Scientific Committee on Antarctic Research or the Commission for the Conservation of Antarctic Marine Living Resources may propose a species for designation as a Specially Protected Species by submitting a proposal with justification to the ATCM.
  8. A permit shall not be issued to take a Specially Protected Species unless the taking:
    - (a) is for a compelling scientific purpose; and
    - (b) will not jeopardise the survival or recovery of that species or local population;
  9. The use of lethal techniques on Specially Protected Species shall only be permitted where there is no suitable alternative technique.
  10. Proposals for the designation of a species as a Specially Protected Species shall be forwarded to the Committee, the Scientific Committee on Antarctic Research and, for native mammals and birds, the Commission for the Conservation of Antarctic Marine Living Resources, and as appropriate, the Meeting of the Parties to the Agreement on the Conservation of Albatrosses and Petrels and other organisations. In formulating its advice to the ATCM on
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whether a species should be designated as a Specially Protected Species, the Committee shall take into account any comments provided by the Scientific Committee on Antarctic Research, and, for native mammals and birds, the Commission for the Conservation of Antarctic Marine Living Resources, and as appropriate, the Meeting of the Parties to the Agreement on the Conservation of Albatrosses and Petrels and other organisations.

11. All taking of native mammals and birds shall be done in the manner that involves the least degree of pain and suffering practicable.

#### ARTICLE 4

##### ***INTRODUCTION OF NON-NATIVE SPECIES AND DISEASES***

1. No species of living organisms not native to the Antarctic Treaty area shall be introduced onto land or ice shelves, or into water, in the Antarctic Treaty area except in accordance with a permit.
2. Dogs shall not be introduced onto land, ice shelves or sea ice.
3. Permits under paragraph 1 above shall:
  - (a) be issued to allow the importation only of cultivated plants and their reproductive propagules for controlled use, and species of living organisms for controlled experimental use; and
  - (b) specify the species, numbers and, if appropriate, age and sex of the species to be introduced, along with a rationale, justifying the introduction and precautions to be taken to prevent escape or contact with fauna or flora.
4. Any species for which a permit has been issued in accordance with paragraphs 1 and 3 above shall, prior to expiration of the permit, be removed from the Antarctic Treaty area or be disposed of by incineration or equally effective means that eliminates risk to native fauna or flora. The permit shall specify this obligation.
5. Any species, including progeny, not native to the Antarctic Treaty area that is introduced into that area without a permit that has been issued in accordance with paragraph 1 and 3 above, shall be

Endnote 5—Uncommenced amendments

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removed or disposed of whenever feasible, unless the removal or disposal would result in a greater adverse environmental impact. Such removal or disposal may include by incineration or by equally effective means, so as to be rendered sterile, unless it is determined that they pose no risk to native flora or fauna. In addition, all reasonable steps shall be taken to control the consequences of that introduction to avoid harm to native fauna or flora.

6. Nothing in this Article shall apply to the importation of food into the Antarctic Treaty area provided that no live animals are imported for this purpose and all plants and animal parts and products are kept under carefully controlled conditions and disposed of in accordance with Annex III to the Protocol.
7. Each Party shall require that precautions are taken to prevent the accidental introduction of micro-organisms (e.g., viruses, bacteria, yeasts, fungi) not present naturally in the Antarctic Treaty area.
8. No live poultry or other living birds shall be brought into the Antarctic Treaty area. All appropriate efforts shall be made to ensure that poultry or avian products imported into Antarctica are free from contamination by diseases (such as Newcastle's Disease, tuberculosis, and yeast infection) which might be harmful to native flora and fauna. Any poultry or avian products not consumed shall be removed from the Antarctic Treaty area or disposed of by incineration or equivalent means that eliminates the risks of introduction of micro-organisms (e.g. viruses, bacteria, yeasts, fungi) to native flora and fauna.
9. The deliberate introduction of non-sterile soil into the Antarctic Treaty area is prohibited. Parties should, to the maximum extent practicable, ensure that non-sterile soil is not unintentionally imported into the Antarctic Treaty area.

**ARTICLE 5*****INFORMATION***

Each Party shall make publicly available information on prohibited activities and Specially Protected Species to all those persons

present in or intending to enter the Antarctic Treaty area with a view to ensuring that such persons understand and observe the provisions of this Annex.

## ARTICLE 6

### *EXCHANGE OF INFORMATION*

1. The Parties shall make arrangements for:
  - (a) collecting and annually exchanging records (including records of permits) and statistics concerning the numbers or quantities of each species of native mammal, bird, plant or invertebrate taken in the Antarctic Treaty area; and
  - (b) obtaining and exchanging information as to the status of native mammals, birds, plants, and invertebrates in the Antarctic Treaty area, and the extent to which any species or population needs protection.
2. As early as possible, after the end of each austral summer season, but in all cases before 1 October of each year, the Parties shall inform the other Parties as well as the Committee of any step taken pursuant to paragraph 1 above and of the number and nature of permits issued under this Annex in the preceding period of 1 April to 31 March.

## ARTICLE 7

### *RELATIONSHIP WITH OTHER AGREEMENTS OUTSIDE THE ANTARCTIC TREATY SYSTEM*

Nothing in this Annex shall derogate from the rights and obligations of Parties under the International Convention for the Regulation of Whaling.

## ARTICLE 8

### *REVIEW*



Endnote 5—Uncommenced amendments

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The Parties shall keep under continuing review measures for the conservation of Antarctic fauna and flora, taking into account any recommendations from the Committee.

**ARTICLE 9*****AMENDMENT OR MODIFICATION***

1. This Annex may be amended or modified by a measure adopted in accordance with Article IX (1) of the Antarctic Treaty. Unless the measure specifies otherwise, the amendment or modification shall be deemed to have been approved, and shall become effective, one year after the close of the Antarctic Treaty Consultative Meeting at which it was adopted, unless one or more of the Antarctic Treaty Consultative Parties notifies the Depositary, within that time period, that it wishes an extension of that period or that it is unable to approve the measure.
2. Any amendment or modification of this Annex which becomes effective in accordance with paragraph 1 above shall thereafter become effective as to any other Party when notice of approval by it has been received by the Depositary.

**APPENDICES TO THE ANNEX****APPENDIX A:*****SPECIALLY PROTECTED SPECIES***

*Ommatophoca rossii*, Ross Seal.

**Antarctic Treaty (Environment Protection) Amendment Act 2012 (No. 90, 2012)**

**Schedule 1****1 Subsection 3(1)**

Insert:

***non-State operator*** means a person who is not a Contracting Party to the Treaty.

## Endnotes

### Endnote 5—Uncommenced amendments

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## 2 Subsection 3(1)

Insert:

*safety approval* means a safety approval granted under section 13AC.

## 3 After Part 3

Insert:

# Part 3A—Safety approvals

## Division 1—Introduction

### 13AA Simplified outline

The following is a simplified outline of this Part:

This Part deals with safety approvals.

A non-State operator may apply for a safety approval in relation to an activity (other than a mining activity) to be carried on in the Antarctic.

The Minister may grant the approval if the Minister is satisfied that the operator has or will have certain contingency plans, and insurance or other arrangements, in relation to the activity.

Mandatory conditions relating to those matters are imposed on all safety approvals and those conditions cannot be varied or revoked. The Minister may also impose further conditions on a safety approval, and may vary or revoke those conditions.

If the Minister is satisfied that it is necessary to do so, the Minister may vary a safety approval on his or her own initiative or at the request of the holder of the approval.

The Minister may suspend or revoke a safety approval if the Minister is satisfied that there has been non-compliance with the

conditions imposed on the approval or that the suspension or revocation is appropriate in all the circumstances.

The Minister must cause a register of safety approvals to be kept.

## **Division 2—Obtaining a safety approval**

### **13AB Application for safety approval**

- (1) A non-State operator may apply to the Minister for a safety approval in relation to an activity (other than a mining activity) that is to be carried on in the Antarctic.
- (2) The application must be in the form approved, in writing, by the Minister.

#### *Request for further information*

- (3) The Minister may, by written notice, request the applicant to give the Minister, within the period specified in the notice, further information in relation to the application.
- (4) If:
  - (a) a request is made under subsection (3); and
  - (b) the applicant does not give the requested information within the period specified in the notice;the Minister may refuse to grant the safety approval under section 13AC.

#### *Withdrawal of application*

- (5) An applicant may, by written notice given to the Minister, withdraw the application at any time before the Minister makes a decision on the application.

### **13AC Grant of safety approval**

- (1) If a non-State operator applies for a safety approval under section 13AB in relation to an activity, the Minister may grant the approval.

## Endnotes

### Endnote 5—Uncommenced amendments

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- (2) The Minister must not grant the approval unless the Minister is satisfied that:
  - (a) the operator has an appropriate contingency plan, and sufficient arrangements, for health and safety, search and rescue, and medical care and evacuation in relation to the activity; and
  - (b) the operator has or will have adequate insurance, or other arrangements, that will cover any costs associated with search and rescue, and medical care and evacuation, in relation to the activity.

### **13AD Notice of decision**

#### *Notice of grant*

- (1) If the Minister grants a non-State operator a safety approval under section 13AC in relation to an activity, the Minister must give written notice of the decision to the operator.
- (2) The notice must set out:
  - (a) the name of the operator; and
  - (b) the nature of the activity; and
  - (c) the conditions imposed under section 13AE; and
  - (d) any other conditions imposed under section 13AF at the time of the grant; and
  - (e) any other matters relating to the approval that the Minister considers appropriate.

#### *Notice of refusal*

- (3) If the Minister refuses to grant a non-State operator a safety approval under section 13AC, the Minister must give the person written notice of the decision and the reasons for the decision.

## **Division 3—Conditions of safety approvals**

### **13AE Mandatory conditions**

If the Minister grants a non-State operator a safety approval under section 13AC in relation to an activity, the following conditions are imposed on the approval:

- (a) a condition that the operator must have an appropriate contingency plan, and sufficient arrangements, for health and safety, search and rescue, and medical care and evacuation in relation to the activity;
- (b) a condition that the operator must have adequate insurance, or other arrangements, that will cover any costs associated with search and rescue, and medical care and evacuation, in relation to the activity.

### **13AF Imposition, variation and revocation of conditions**

- (1) Subject to subsection (5), the Minister may at any time:
  - (a) impose conditions, or additional conditions, on a safety approval; or
  - (b) vary or revoke conditions imposed on a safety approval (other than the conditions imposed under section 13AE).
- (2) The Minister's power under subsection (1) may be exercised:
  - (a) on the Minister's own initiative; or
  - (b) at the request of the holder of a safety approval.

*Request that condition be imposed etc.*

- (3) The holder of a safety approval may request the Minister to impose a condition on, or to vary or revoke a condition imposed on, the approval.
- (4) The request must be made in writing and set out the reasons for the making of the request.
- (5) If a request is made under subsection (3), the Minister must not impose a condition on, or vary or revoke a condition imposed on,

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the safety approval unless the Minister is satisfied that the reasons set out in the request justify the imposition, variation or revocation.

*Notice of decision etc.*

- (6) If the Minister imposes a condition on, or varies or revokes a condition imposed on, a safety approval after it is granted:
  - (a) the Minister must give the holder of the approval written notice of the imposition, variation or revocation; and
  - (b) the imposition, variation or revocation takes effect on the day specified in the notice (which must be at least 5 days after the day on which the notice is given).
- (7) If:
  - (a) the holder of a safety approval makes a request under subsection (3); and
  - (b) the Minister refuses to comply with the request;the Minister must give the holder written notice of the decision and the reasons for the decision.

## **Division 4—Variation, suspension and revocation of safety approvals**

### **13AG Variation of safety approval**

*Variation on Minister's own initiative*

- (1) The Minister may, on the Minister's own initiative, vary a safety approval if the Minister is satisfied that it is necessary to do so.

*Request for variation*

- (2) The holder of a safety approval may request the Minister to vary the approval.
- (3) The request must be made in writing and set out the reasons for the making of the request.

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- (4) If a request is made under subsection (2), the Minister may vary the safety approval if the Minister is satisfied that the reasons set out in the request justify the variation.

*Notice of decision etc.*

- (5) If a safety approval is varied under subsection (1) or (4):
- (a) the Minister must give the holder of the approval written notice of the variation; and
  - (b) the variation takes effect on the day specified in the notice (which must be at least 5 days after the day on which the notice is given).
- (6) If:
- (a) the holder of a safety approval makes a request under subsection (2); and
  - (b) the Minister refuses to comply with the request;
- the Minister must give the holder written notice of the decision and the reasons for the decision.

### **13AH Suspension or revocation of safety approval**

- (1) The Minister may, by written notice given to the holder of a safety approval, suspend or revoke the approval if:
- (a) the Minister is satisfied that a condition imposed on the approval has not been, or is not being, complied with; or
  - (b) the Minister considers the suspension or revocation is appropriate in all the circumstances.

*When suspension or revocation takes effect*

- (2) If a safety approval is suspended or revoked under subsection (1), the suspension or revocation takes effect on the day specified in the notice (which must be at least 5 days after the day on which the notice is given).

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#### *Period of suspension etc.*

- (3) If a safety approval is suspended under subsection (1), the notice must specify the period of suspension (which must not be longer than 90 days after the day on which the suspension takes effect).
- (4) If:
  - (a) a safety approval in relation to an activity is suspended under subsection (1); and
  - (b) proceedings relating to either of the following are started while the approval is suspended:
    - (i) an offence against this Act that relates to the carrying on of the activity;
    - (ii) a contravention of a civil penalty provision that relates to the carrying on of the activity;then, despite subsection (3), the period of suspension continues until the proceedings (including any appeal) are completed.
- (5) The suspension of a safety approval does not prevent its revocation.

## Division 6—Miscellaneous

### 13AK Register

- (1) The Minister must cause to be kept a register of safety approvals granted under this Act.
- (2) The register must include the following information about a safety approval:
  - (a) the name of the holder of the approval;
  - (b) the nature of the activity to which the approval relates;
  - (c) the conditions imposed on the approval;
  - (d) any other information prescribed by the regulations.
- (3) The register must be kept in electronic form.
- (4) The regulations may make provision for, or in relation to, the register.



**13AL Monitoring of activity**

The regulations may provide for the monitoring of an activity in relation to which a safety approval has been granted.

**4 After subsection 28(1A)**

Insert:

- (1B) Applications may be made to the Administrative Appeals Tribunal for review of the following decisions of the Minister:
- (a) a decision under subsection 13AC(1) to refuse to grant a safety approval;
  - (b) a decision under paragraph 13AF(1)(a) to impose, or to refuse to impose, conditions on a safety approval;
  - (c) a decision under paragraph 13AF(1)(b) to vary or revoke, or to refuse to vary or revoke, conditions imposed on a safety approval;
  - (d) a decision under subsection 13AG(1) to vary a safety approval;
  - (e) a decision under subsection 13AG(4) to refuse to vary a safety approval;
  - (f) a decision under subsection 13AH(1) to suspend or revoke a safety approval.

**5 After paragraph 29(2)(ac)**

Insert:

- (ad) providing for:
- (i) the payment of a fee in the amount, or at the rate, fixed by or calculated under the regulations in respect of the processing of an application for a safety approval, or the grant of the approval; and
  - (ii) the refund of the fee; and

**Schedule 1****6 After subsection 9(2B)**

Insert:

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- (2C) If a person is a non-State operator, the Minister must not grant the person a permit authorising an activity unless the person holds a safety approval in relation to the activity.

## 7 Section 13AA (before the last paragraph)

Insert:

<p>A person must not carry on an activity in the Antarctic unless the non-State operator who organises the activity holds a safety approval. The conditions imposed on the approval must be complied with.</p>
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## 8 After Division 4 of Part 3A

Insert:

### Division 5—Offences etc. relating to safety approvals

#### 13AI Activity must not be carried on without safety approval

- (1) A non-State operator contravenes this subsection if:
- (a) the operator organises an activity to be carried on in the Antarctic; and
  - (b) a person carries on the activity at a particular time; and
  - (c) at that time, the operator does not hold a safety approval in relation to the activity.
- (2) A person contravenes this subsection if:
- (a) the person carries on an activity in the Antarctic at a particular time; and
  - (b) the activity was organised by a non-State operator; and
  - (c) at that time, the operator does not hold a safety approval in relation to the activity.
- (3) Subsections (1) and (2) do not apply if:
- (a) the activity is carried on in an emergency:
    - (i) to save a person from death or serious injury; or

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- (ii) to secure the safety of a ship or aircraft, or the safety of equipment or facilities of high value; or
- (iii) to protect the environment; or
- (b) the non-State operator is authorised to carry on the activity under a law of a Contracting Party.

*Offence*

- (4) A person commits an offence if the person contravenes subsection (1) or (2). The physical elements of the offences are set out in those subsections.

Penalty: Imprisonment for 7 years or 420 penalty units, or both.

Note: The defendant bears an evidential burden in relation to the matters in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

*Civil penalty provision*

- (5) A person is liable to a civil penalty if the person contravenes subsection (1) or (2).

Civil penalty: 1,000 penalty units.

Note: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 22N).

- (6) A person who wishes to rely on subsection (3) in proceedings for a civil penalty order bears an evidential burden in relation to the matters in that subsection.

**13AJ Non-compliance with conditions**

- (1) A non-State operator contravenes this subsection if:
- (a) the operator holds a safety approval in relation to an activity; and
  - (b) a person carries on the activity; and
  - (c) the conditions imposed on the approval are not complied with.
- (2) Subsection (1) does not apply if:
- (a) the activity is carried on in an emergency:

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- (i) to save a person from death or serious injury; or
  - (ii) to secure the safety of a ship or aircraft, or the safety of equipment or facilities of high value; or
  - (iii) to protect the environment; or
- (b) the non-State operator is authorised to carry on the activity under a law of a Contracting Party.

#### *Offence*

- (3) A non-State operator commits an offence if the operator contravenes subsection (1). The physical elements of the offence are set out in that subsection.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Note: The defendant bears an evidential burden in relation to the matters in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

#### *Civil penalty provision*

- (4) A non-State operator is liable to a civil penalty if the operator contravenes subsection (1).

Civil penalty: 500 penalty units.

Note: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 22N).

- (5) A non-State operator who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matters in that subsection.

## **9 After subsection 17(4)**

Insert:

- (4A) An inspector may require any person whom he or she finds carrying on, or whom he or she reasonably suspects of having carried on, an activity in respect of which a non-State operator is required to hold a safety approval to produce:
- (a) the approval; or
  - (b) evidence of the existence and contents of the approval.

**Schedule 2****1 Subsection 3(1)**

Insert:

*environmental emergency* means an event that results in, or imminently threatens to result in, any significant and harmful impact on the Antarctic environment.

**2 Subsection 3(1)**

Insert:

*environmental protection approval* means an environmental protection approval granted under section 13BC.

**3 Subsection 3(1) (definition of *Madrid Protocol*)**

Omit all the words after “4 October 1991”, substitute:

and to which:

- (a) in accordance with Recommendation XVI-10 adopted by the XVIth Antarctic Treaty Consultative Meeting at Bonn on 18 October 1991, the Annex attached to that Recommendation has been added as Annex V to the Protocol; and
- (b) in accordance with Measure 1 (2005) adopted by the XXVIIIth Antarctic Treaty Consultative Meeting at Stockholm on 17 June 2005, the Annex attached to that Measure has been added as Annex VI to the Protocol.

**4 Subsection 3(1)**

Insert:

*operator* means a person who organises, or intends to organise, an activity to be carried on in the Antarctic but does not include:

- (a) if the person is a Party to the Madrid Protocol—a contractor or subcontractor acting on behalf of the person if the contractor or subcontractor is not an individual; or
- (b) otherwise—an individual who:

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- (i) is an employee, contractor, subcontractor or agent of the person; or
- (ii) is in the service of the person.

## 5 Subsection 3(1)

Insert:

*reasonable preventative measures* means preventative measures which are:

- (a) appropriate, practicable and proportionate; and
- (b) based on the availability of objective criteria and information, including information about:
  - (i) the risks to the Antarctic environment, and the rate of its natural recovery; and
  - (ii) the risks to human life and safety; and
  - (iii) technological and economic feasibility.

## 6 Before Part 4

Insert:

# Part 3B—Environmental protection approvals

## Division 1—Introduction

### 13BA Simplified outline

The following is a simplified outline of this Part:

This Part deals with environmental protection approvals.

An operator may apply for an environmental protection approval in relation to an activity (other than a mining activity) to be carried on in the Antarctic.

The Minister may grant the approval if the Minister is satisfied that the operator meets certain requirements in relation to the activity.

Mandatory conditions relating to those requirements are imposed on all environmental protection approvals and those conditions cannot be varied or revoked. The Minister may also impose further conditions on an environmental protection approval, and may vary or revoke those conditions.

If the Minister is satisfied that it is necessary to do so, the Minister may vary an environmental protection approval on his or her own initiative or at the request of the holder of the approval.

The Minister may suspend or revoke an environmental protection approval if the Minister is satisfied that there has been non-compliance with the conditions imposed on the approval or that the suspension or revocation is appropriate in all the circumstances.

The Minister must cause a register of environmental protection approvals to be kept.

## **Division 2—Obtaining an environmental protection approval**

### **13BB Application for environmental protection approval**

- (1) An operator may apply to the Minister for an environmental protection approval in relation to an activity (other than a mining activity) that is to be carried on in the Antarctic.
- (2) The application must be in the form approved, in writing, by the Minister.

#### *Request for further information*

- (3) The Minister may, by written notice, request the applicant to give the Minister, within the period specified in the notice, further information in relation to the application.
- (4) If:
  - (a) a request is made under subsection (3); and

(b) the applicant does not give the requested information within the period specified in the notice;  
the Minister may refuse to grant the environmental protection approval under section 13BC.

*Withdrawal of application*

- (5) An applicant may, by written notice given to the Minister, withdraw the application at any time before the Minister makes a decision on the application.

**13BC Grant of environmental protection approval**

- (1) If an operator applies for an environmental protection approval under section 13BB in relation to an activity, the Minister may grant the approval.
- (2) The Minister must not grant the approval unless the Minister is satisfied that:
- (a) the operator has undertaken or will undertake reasonable preventative measures designed to reduce:
    - (i) the risk of environmental emergencies arising from the activity; and
    - (ii) the potential adverse impact of environmental emergencies arising from the activity; and
  - (b) the operator has an appropriate contingency plan for responding to incidents with potential adverse impact on the Antarctic environment, or dependent and associated eco-systems, that arise from the activity; and
  - (c) the operator has or will have the insurance, or other financial security, that is referred to in Articles 11(1) and (2) of Annex VI to the Madrid Protocol up to the limits referred to in those Articles.



**13BD Notice of decision***Notice of grant*

- (1) If the Minister grants an operator an environmental protection approval under section 13BC in relation to an activity, the Minister must give written notice of the decision to the operator.
- (2) The notice must set out:
  - (a) the name of the operator; and
  - (b) the nature of the activity; and
  - (c) the conditions imposed under section 13BE; and
  - (d) any other conditions imposed under section 13BF at the time of the grant; and
  - (e) any other matters relating to the approval that the Minister considers appropriate.

*Notice of refusal*

- (3) If the Minister refuses to grant an operator an environmental protection approval under section 13BC, the Minister must give the operator written notice of the decision and the reasons for the decision.

**Division 3—Conditions of environmental protection approvals****13BE Mandatory conditions**

If the Minister grants an operator an environmental protection approval under section 13BC in relation to an activity, the following conditions are imposed on the approval:

- (a) a condition that the operator must undertake reasonable preventative measures designed to reduce:
  - (i) the risk of environmental emergencies arising from the activity; and
  - (ii) the potential adverse impact of environmental emergencies arising from the activity;

- (b) a condition that the operator must have an appropriate contingency plan for responding to incidents with potential adverse impact on the Antarctic environment, or dependent and associated eco-systems, that arise from the activity;
- (c) a condition that the operator must have the insurance, or other financial security, that is referred to in Articles 11(1) and (2) of Annex VI to the Madrid Protocol up to the limits referred to in those Articles.

### **13BF Imposition, variation and revocation of conditions**

- (1) Subject to subsection (5), the Minister may at any time:
  - (a) impose conditions, or additional conditions, on an environmental protection approval; or
  - (b) vary or revoke conditions imposed on an environmental protection approval (other than the conditions imposed under section 13BE).
- (2) The Minister's power under subsection (1) may be exercised:
  - (a) on the Minister's own initiative; or
  - (b) at the request of the holder of an environmental protection approval.

*Request that condition be imposed etc.*

- (3) The holder of an environmental protection approval may request the Minister to impose a condition on, or to vary or revoke a condition imposed on, the approval.
- (4) The request must be made in writing and set out the reasons for the making of the request.
- (5) If a request is made under subsection (3), the Minister must not impose a condition on, or vary or revoke a condition imposed on, the environmental protection approval unless the Minister is satisfied that the reasons set out in the request justify the imposition, variation or revocation.

*Notice of decision etc.*

- (6) If the Minister imposes a condition on, or varies or revokes a condition imposed on, an environmental protection approval after it is granted:
- (a) the Minister must give the holder of the approval written notice of the imposition, variation or revocation; and
  - (b) the imposition, variation or revocation takes effect on the day specified in the notice (which must be at least 5 days after the day on which the notice is given).
- (7) If:
- (a) the holder of an environmental protection approval makes a request under subsection (3); and
  - (b) the Minister refuses to comply with the request;
- the Minister must give the holder written notice of the decision and the reasons for the decision.

## **Division 4—Variation, suspension and revocation of environmental protection approvals**

### **13BG Variation of environmental protection approval**

*Variation on the Minister's own initiative*

- (1) The Minister may, on the Minister's own initiative, vary an environmental protection approval if the Minister is satisfied that it is necessary to do so.

*Request for variation*

- (2) The holder of an environmental protection approval may request the Minister to vary the approval.
- (3) The request must be made in writing and set out the reasons for the making of the request.
- (4) If a request is made under subsection (2), the Minister may vary the environmental protection approval if the Minister is satisfied that the reasons set out in the request justify the variation.

*Notice of decision etc.*

- (5) If an environmental protection approval is varied under subsection (1) or (4):
  - (a) the Minister must give the holder of the approval written notice of the variation; and
  - (b) the variation takes effect on the day specified in the notice (which must be at least 5 days after the day on which the notice is given).
- (6) If:
  - (a) the holder of an environmental protection approval makes a request under subsection (2); and
  - (b) the Minister refuses to comply with the request;the Minister must give the holder written notice of the decision and the reasons for the decision.

**13BH Suspension or revocation of environmental protection approval**

- (1) The Minister may, by written notice given to the holder of an environmental protection approval, suspend or revoke the approval if:
  - (a) the Minister is satisfied that a condition imposed on the approval has not been, or is not being, complied with; or
  - (b) the Minister considers the suspension or revocation is appropriate in all the circumstances.

*When suspension or revocation takes effect*

- (2) If an environmental protection approval is suspended or revoked under subsection (1), the suspension or revocation takes effect on a day specified in the notice (which must be at least 5 days after the day on which the notice is given).

*Period of suspension etc.*

- (3) If an environmental protection approval is suspended under subsection (1), the notice must specify the period of suspension

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(which must not be longer than 90 days after the day on which the suspension takes effect).

- (4) If:
- (a) an environmental protection approval in relation to an activity is suspended under subsection (1); and
  - (b) proceedings relating to either of the following are started while the approval is suspended:
    - (i) an offence against this Act that relates to the carrying on of the activity;
    - (ii) a contravention of a civil penalty provision that relates to the carrying on of the activity;
- then, despite subsection (3), the period of suspension continues until the proceedings (including any appeal) are completed.
- (5) The suspension of an environmental protection approval does not prevent its revocation.

## **Division 6—Miscellaneous**

### **13BK Register**

- (1) The Minister must cause to be kept a register of environmental protection approvals granted under this Part.
- (2) The register must include the following information about an environmental protection approval:
  - (a) the name of the holder of the approval;
  - (b) the nature of the activity to which the approval relates;
  - (c) the conditions imposed on the approval;
  - (d) any other information prescribed by the regulations.
- (3) The register must be kept in electronic form.
- (4) The regulations may make provision for, or in relation to, the register.

### **13BL Monitoring of activity**

The regulations may provide for the monitoring of an activity in relation to which an environmental protection approval has been granted.

### **7 Before subsection 28(2)**

Insert:

- (1C) Applications may be made to the Administrative Appeals Tribunal for review of the following decisions of the Minister:
- (a) a decision under subsection 13BC(1) to refuse to grant an environmental protection approval;
  - (b) a decision under paragraph 13BF(1)(a) to impose, or to refuse to impose, conditions on an environmental protection approval;
  - (c) a decision under paragraph 13BF(1)(b) to vary or revoke, or to refuse to vary or revoke, conditions imposed on an environmental protection approval;
  - (d) a decision under subsection 13BG(1) to vary an environmental protection approval;
  - (e) a decision under subsection 13BG(4) to refuse to vary an environmental protection approval;
  - (f) a decision under subsection 13BH(1) to suspend or revoke an environmental protection approval.

### **8 Before paragraph 29(2)(b)**

Insert:

- (ae) providing for:
- (i) the payment of a fee in the amount, or at the rate, fixed by or calculated under the regulations in respect of the processing of an application for an environmental protection approval, or the grant of the approval; and
  - (ii) the refund of the fee; and

### **9 At the end of Schedule 3**

Add:

**ANNEX VI TO THE PROTOCOL ON ENVIRONMENTAL  
PROTECTION TO THE ANTARCTIC TREATY****LIABILITY ARISING FROM ENVIRONMENTAL EMERGENCIES***Preamble*

The Parties,

*Recognising* the importance of preventing, minimising and containing the impact of environmental emergencies on the Antarctic environment and dependent and associated ecosystems;

*Recalling* Article 3 of the Protocol, in particular that activities shall be planned and conducted in the Antarctic Treaty area so as to accord priority to scientific research and to preserve the value of Antarctica as an area for the conduct of such research;

*Recalling* the obligation in Article 15 of the Protocol to provide for prompt and effective response action to environmental emergencies, and to establish contingency plans for response to incidents with potential adverse effects on the Antarctic environment or dependent and associated ecosystems;

*Recalling* Article 16 of the Protocol under which the Parties to the Protocol undertook consistent with the objectives of the Protocol for the comprehensive protection of the Antarctic environment and dependent and associated ecosystems to elaborate, in one or more Annexes to the Protocol, rules and procedures relating to liability for damage arising from activities taking place in the Antarctic Treaty area and covered by the Protocol;

*Noting* further Decision 3 (2001) of the XXIVth Antarctic Treaty Consultative Meeting regarding the elaboration of an Annex on the liability aspects of environmental emergencies, as a step in the establishment of a liability regime in accordance with Article 16 of the Protocol;

*Having regard to* Article IV of the Antarctic Treaty and Article 8 of the Protocol;

**Have agreed** as follows:

*Article 1*

**Scope**

This Annex shall apply to environmental emergencies in the Antarctic Treaty area which relate to scientific research programmes, tourism and all other governmental and nongovernmental activities in the Antarctic Treaty area for which advance notice is required under Article VII(5) of the Antarctic Treaty, including associated logistic support activities. Measures and plans for preventing and responding to such emergencies are also included in this Annex. It shall apply to all tourist vessels that enter the Antarctic Treaty area. It shall also apply to environmental emergencies in the Antarctic Treaty area which relate to other vessels and activities as may be decided in accordance with Article 13.

*Article 2*

**Definitions**

For the purposes of this Annex:

- (a) “Decision” means a Decision adopted pursuant to the Rules of Procedure of Antarctic Treaty Consultative Meetings and referred to in Decision 1 (1995) of the XIXth Antarctic Treaty Consultative Meeting;
- (b) “Environmental emergency” means any accidental event that has occurred, having taken place after the entry into force of this Annex, and that results in, or imminently threatens to result in, any significant and harmful impact on the Antarctic environment;
- (c) “Operator” means any natural or juridical person, whether governmental or nongovernmental, which organises activities to be carried out in the Antarctic Treaty area. An operator does not include a natural person who is an employee, contractor, subcontractor, or agent of, or who is in the service of, a natural or juridical person, whether governmental or non-governmental, which organises activities to be carried out in the Antarctic Treaty area, and does not include a juridical person that is a contractor or subcontractor acting on behalf of a State operator;



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- (d) “Operator of the Party” means an operator that organises, in that Party’s territory, activities to be carried out in the Antarctic Treaty area, and:
- (i) those activities are subject to authorisation by that Party for the Antarctic Treaty area; or
  - (ii) in the case of a Party which does not formally authorise activities for the Antarctic Treaty area, those activities are subject to a comparable regulatory process by that Party.

The terms “its operator”, “Party of the operator”, and “Party of that operator” shall be interpreted in accordance with this definition;

- (e) “Reasonable”, as applied to preventative measures and response action, means measures or actions which are appropriate, practicable, proportionate and based on the availability of objective criteria and information, including:
- (i) risks to the Antarctic environment, and the rate of its natural recovery;
  - (ii) risks to human life and safety; and
  - (iii) technological and economic feasibility;
- (f) “Response action” means reasonable measures taken after an environmental emergency has occurred to avoid, minimise or contain the impact of that environmental emergency, which to that end may include clean-up in appropriate circumstances, and includes determining the extent of that emergency and its impact;
- (g) “The Parties” means the States for which this Annex has become effective in accordance with Article 9 of the Protocol.

### *Article 3*

#### **Preventative Measures**

1. Each Party shall require its operators to undertake reasonable preventative measures that are designed to reduce the risk of environmental emergencies and their potential adverse impact.

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2. Preventative measures may include:
  - (a) specialised structures or equipment incorporated into the design and construction of facilities and means of transportation;
  - (b) specialised procedures incorporated into the operation or maintenance of facilities and means of transportation; and
  - (c) specialised training of personnel.

#### *Article 4*

#### **Contingency Plans**

1. Each Party shall require its operators to:
  - (a) establish contingency plans for responses to incidents with potential adverse impacts on the Antarctic environment or dependent and associated ecosystems; and
  - (b) co-operate in the formulation and implementation of such contingency plans.
2. Contingency plans shall include, when appropriate, the following components:
  - (a) procedures for conducting an assessment of the nature of the incident;
  - (b) notification procedures;
  - (c) identification and mobilisation of resources;
  - (d) response plans;
  - (e) training;
  - (f) record keeping; and
  - (g) demobilisation.

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3. Each Party shall establish and implement procedures for immediate notification of, and co-operative responses to, environmental emergencies, and shall promote the use of notification procedures and co-operative response procedures by its operators that cause environmental emergencies.

*Article 5*

**Response Action**

1. Each Party shall require each of its operators to take prompt and effective response action to environmental emergencies arising from the activities of that operator.

2. In the event that an operator does not take prompt and effective response action, the Party of that operator and other Parties are encouraged to take such action, including through their agents and operators specifically authorised by them to take such action on their behalf.

3. (a) Other Parties wishing to take response action to an environmental emergency pursuant to paragraph 2 above shall notify their intention to the Party of the operator and the Secretariat of the Antarctic Treaty beforehand with a view to the Party of the operator taking response action itself, except where a threat of significant and harmful impact to the Antarctic environment is imminent and it would be reasonable in all the circumstances to take immediate response action, in which case they shall notify the Party of the operator and the Secretariat of the Antarctic Treaty as soon as possible.

(b) Such other Parties shall not take response action to an environmental emergency pursuant to paragraph 2 above, unless a threat of significant and harmful impact to the Antarctic environment is imminent and it would be reasonable in all the circumstances to take immediate response action, or the Party of the operator has failed within a reasonable time to notify the Secretariat of the Antarctic Treaty that it will take the response action itself, or where that response action has not been taken within a reasonable time after such notification.

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(c) In the case that the Party of the operator takes response action itself, but is willing to be assisted by another Party or Parties, the Party of the operator shall coordinate the response action.

4. However, where it is unclear which, if any, Party is the Party of the operator or it appears that there may be more than one such Party, any Party taking response action shall make best endeavours to consult as appropriate and shall, where practicable, notify the Secretariat of the Antarctic Treaty of the circumstances.

5. Parties taking response action shall consult and coordinate their action with all other Parties taking response action, carrying out activities in the vicinity of the environmental emergency, or otherwise impacted by the environmental emergency, and shall, where practicable, take into account all relevant expert guidance which has been provided by permanent observer delegations to the Antarctic Treaty Consultative Meeting, by other organisations, or by other relevant experts.

### *Article 6*

#### **Liability**

1. An operator that fails to take prompt and effective response action to environmental emergencies arising from its activities shall be liable to pay the costs of response action taken by Parties pursuant to Article 5(2) to such Parties.

2. (a) When a State operator should have taken prompt and effective response action but did not, and no response action was taken by any Party, the State operator shall be liable to pay the costs of the response action which should have been undertaken, into the fund referred to in Article 12.

(b) When a non-State operator should have taken prompt and effective response action but did not, and no response action was taken by any Party, the non-State operator shall be liable to pay an amount of money that reflects as much as possible the costs of the response action that should have been taken. Such money is to be paid directly to the fund referred to in Article 12, to the Party of that operator or to the Party that enforces the mechanism referred to in Article 7(3). A Party

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receiving such money shall make best efforts to make a contribution to the fund referred to in Article 12 which at least equals the money received from the operator.

3. Liability shall be strict.

4. When an environmental emergency arises from the activities of two or more operators, they shall be jointly and severally liable, except that an operator which establishes that only part of the environmental emergency results from its activities shall be liable in respect of that part only.

5. Notwithstanding that a Party is liable under this Article for its failure to provide for prompt and effective response action to environmental emergencies caused by its warships, naval auxiliaries, or other ships or aircraft owned or operated by it and used, for the time being, only on government non-commercial service, nothing in this Annex is intended to affect the sovereign immunity under international law of such warships, naval auxiliaries, or other ships or aircraft.

### *Article 7*

#### **Actions**

1. Only a Party that has taken response action pursuant to Article 5(2) may bring an action against a non-State operator for liability pursuant to Article 6(1) and such action may be brought in the courts of not more than one Party where the operator is incorporated or has its principal place of business or his or her habitual place of residence. However, should the operator not be incorporated in a Party or have its principal place of business or his or her habitual place of residence in a Party, the action may be brought in the courts of the Party of the operator within the meaning of Article 2(d). Such actions for compensation shall be brought within three years of the commencement of the response action or within three years of the date on which the Party bringing the action knew or ought reasonably to have known the identity of the operator, whichever is later. In no event shall an action against a non-State operator be commenced later than 15 years after the commencement of the response action.

2. Each Party shall ensure that its courts possess the necessary jurisdiction to entertain actions under paragraph 1 above.

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3. Each Party shall ensure that there is a mechanism in place under its domestic law for the enforcement of Article 6(2)(b) with respect to any of its non-State operators within the meaning of Article 2(d), as well as where possible with respect to any non-State operator that is incorporated or has its principal place of business or his or her habitual place of residence in that Party. Each Party shall inform all other Parties of this mechanism in accordance with Article 13(3) of the Protocol. Where there are multiple Parties that are capable of enforcing Article 6(2)(b) against any given non-State operator under this paragraph, such Parties should consult amongst themselves as to which Party should take enforcement action. The mechanism referred to in this paragraph shall not be invoked later than 15 years after the date the Party seeking to invoke the mechanism became aware of the environmental emergency.
4. The liability of a Party as a State operator under Article 6(1) shall be resolved only in accordance with any enquiry procedure which may be established by the Parties, the provisions of Articles 18, 19 and 20 of the Protocol and, as applicable, the Schedule to the Protocol on Arbitration.
5. (a) The liability of a Party as a State operator under Article 6(2)(a) shall be resolved only by the Antarctic Treaty Consultative Meeting and, should the question remain unresolved, only in accordance with any enquiry procedure which may be established by the Parties, the provisions of Articles 18, 19 and 20 of the Protocol and, as applicable, the Schedule to the Protocol on Arbitration.
- (b) The costs of the response action which should have been undertaken and was not, to be paid by a State operator into the fund referred to in Article 12, shall be approved by means of a Decision. The Antarctic Treaty Consultative Meeting should seek the advice of the Committee on Environmental Protection as appropriate.
6. Under this Annex, the provisions of Articles 19(4), 19(5), and 20(1) of the Protocol, and, as applicable, the Schedule to the Protocol on Arbitration, are only applicable to liability of a Party as a State operator for compensation for response action that has been undertaken to an environmental emergency or for payment into the fund.

**Article 8****Exemptions from Liability**

1. An operator shall not be liable pursuant to Article 6 if it proves that the environmental emergency was caused by:
  - (a) an act or omission necessary to protect human life or safety;
  - (b) an event constituting in the circumstances of Antarctica a natural disaster of an exceptional character, which could not have been reasonably foreseen, either generally or in the particular case, provided all reasonable preventative measures have been taken that are designed to reduce the risk of environmental emergencies and their potential adverse impact;
  - (c) an act of terrorism; or
  - (d) an act of belligerency against the activities of the operator.
2. A Party, or its agents or operators specifically authorised by it to take such action on its behalf, shall not be liable for an environmental emergency resulting from response action taken by it pursuant to Article 5(2) to the extent that such response action was reasonable in all the circumstances.

**Article 9****Limits of Liability**

1. The maximum amount for which each operator may be liable under Article 6(1) or Article 6(2), in respect of each environmental emergency, shall be as follows:
  - (a) for an environmental emergency arising from an event involving a ship:
    - (i) one million SDR for a ship with a tonnage not exceeding 2,000 tons;

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- (ii) for a ship with a tonnage in excess thereof, the following amount in addition to that referred to in (i) above:
    - for each ton from 2,001 to 30,000 tons, 400 SDR;
    - for each ton from 30,001 to 70,000 tons, 300 SDR; and
    - for each ton in excess of 70,000 tons, 200 SDR;
  - (b) for an environmental emergency arising from an event which does not involve a ship, three million SDR.
- 2. (a) Notwithstanding paragraph 1(a) above, this Annex shall not affect:
  - (i) the liability or right to limit liability under any applicable international limitation of liability treaty; or
  - (ii) the application of a reservation made under any such treaty to exclude the application of the limits therein for certain claims;

provided that the applicable limits are at least as high as the following:  
for a ship with a tonnage not exceeding 2,000 tons, one million SDR;  
and for a ship with a tonnage in excess thereof, in addition, for a ship with a tonnage between 2,001 and 30,000 tons, 400 SDR for each ton;  
for a ship with a tonnage from 30,001 to 70,000 tons, 300 SDR for each ton; and for each ton in excess of 70,000 tons, 200 SDR for each ton.

  - (b) Nothing in subparagraph (a) above shall affect either the limits of liability set out in paragraph 1(a) above that apply to a Party as a State operator, or the rights and obligations of Parties that are not parties to any such treaty as mentioned above, or the application of Article 7(1) and Article 7(2).
- 3. Liability shall not be limited if it is proved that the environmental emergency resulted from an act or omission of the operator, committed with the



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intent to cause such emergency, or recklessly and with knowledge that such emergency would probably result.

4. The Antarctic Treaty Consultative Meeting shall review the limits in paragraphs 1(a) and 1(b) above every three years, or sooner at the request of any Party. Any amendments to these limits, which shall be determined after consultation amongst the Parties and on the basis of advice including scientific and technical advice, shall be made under the procedure set out in Article 13(2).

5. For the purpose of this Article:

(a) “ship” means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and fixed or floating platforms;

(b) “SDR” means the Special Drawing Rights as defined by the International Monetary Fund;

(c) a ship’s tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement rules contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969.

### *Article 10*

#### **State Liability**

A Party shall not be liable for the failure of an operator, other than its State operators, to take response action to the extent that that Party took appropriate measures within its competence, including the adoption of laws and regulations, administrative actions and enforcement measures, to ensure compliance with this Annex.

### *Article 11*

#### **Insurance and Other Financial Security**

1. Each Party shall require its operators to maintain adequate insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover liability under Article 6(1) up to the applicable limits set out in Article 9(1) and Article 9(2).

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2. Each Party may require its operators to maintain adequate insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover liability under Article 6(2) up to the applicable limits set out in Article 9(1) and Article 9(2).
3. Notwithstanding paragraphs 1 and 2 above, a Party may maintain self-insurance in respect of its State operators, including those carrying out activities in the furtherance of scientific research.

### *Article 12*

#### **The Fund**

1. The Secretariat of the Antarctic Treaty shall maintain and administer a fund, in accordance with Decisions including terms of reference to be adopted by the Parties, to provide, *inter alia*, for the reimbursement of the reasonable and justified costs incurred by a Party or Parties in taking response action pursuant to Article 5(2).
2. Any Party or Parties may make a proposal to the Antarctic Treaty Consultative Meeting for reimbursement to be paid from the fund. Such a proposal may be approved by the Antarctic Treaty Consultative Meeting, in which case it shall be approved by way of a Decision. The Antarctic Treaty Consultative Meeting may seek the advice of the Committee of Environmental Protection on such a proposal, as appropriate.
3. Special circumstances and criteria, such as: the fact that the responsible operator was an operator of the Party seeking reimbursement; the identity of the responsible operator remaining unknown or not subject to the provisions of this Annex; the unforeseen failure of the relevant insurance company or financial institution; or an exemption in Article 8 applying, shall be duly taken into account by the Antarctic Treaty Consultative Meeting under paragraph 2 above.
4. Any State or person may make voluntary contributions to the fund.

### *Article 13*

#### **Amendment or Modification**

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1. This Annex may be amended or modified by a Measure adopted in accordance with Article IX(1) of the Antarctic Treaty.
2. In the case of a Measure pursuant to Article 9(4), and in any other case unless the Measure in question specifies otherwise, the amendment or modification shall be deemed to have been approved, and shall become effective, one year after the close of the Antarctic Treaty Consultative Meeting at which it was adopted, unless one or more Antarctic Treaty Consultative Parties notifies the Depositary, within that time period, that it wishes any extension of that period or that it is unable to approve the Measure.
3. Any amendment or modification of this Annex which becomes effective in accordance with paragraph 1 or 2 above shall thereafter become effective as to any other Party when notice of approval by it has been received by the Depositary.

**Schedule 2****10 Subsection 3(1)**

Insert:

*Account* means the Antarctic Environmental Liability Special Account established under section 13CJ.

**11 Subsection 3(1)**

Insert:

*authorised officer* means a person appointed under section 3A as an authorised officer for the purposes of a provision of this Act.

**12 Subsection 3(1)**

Insert:

*costs order* means an order under subsection 13CF(1) or 13CG(1).

**13 Subsection 3(1)**

Insert:

*engage in conduct* means:  
(a) do an act; or

- (b) omit to perform an act.

#### 14 Subsection 3(1)

Insert:

*reasonable measures* means measures which are:

- (a) appropriate, practicable and proportionate; and
- (b) based on the availability of objective criteria and information, including information about:
  - (i) the risks to the Antarctic environment, and the rate of its natural recovery; and
  - (ii) the risks to human life and safety; and
  - (iii) technological and economic feasibility.

#### 15 Subsection 3(1)

Insert:

*response action* means reasonable measures taken after an environmental emergency has occurred to avoid, minimise or contain the impact of the emergency and includes:

- (a) cleaning up in appropriate circumstances; and
- (b) determining the extent and impact of the emergency.

#### 16 After section 3

Insert:

#### 3A Minister may appoint authorised officers

- (1) The Minister may, in writing, appoint a person:
  - (a) who is an SES employee, or acting SES employee, in the Department; or
  - (b) who is an APS employee who holds or performs the duties of an Executive Level 2 position, or an equivalent position, in the Department;

as an authorised officer for the purposes of a provision of this Act.

Note: *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

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- (2) A copy of the instrument of appointment must be published in the *Gazette*.

**17 Before subsection 9(3)**

Insert:

- (2D) If a person is an operator, the Minister must not grant the person a permit authorising an activity unless the person holds an environmental protection approval in relation to the activity.

**18 Section 13BA (before the last paragraph)**

Insert:

<p>A person must not carry on an activity in the Antarctic unless the operator who organises the activity holds an environmental protection approval. The conditions imposed on the approval must be complied with.</p>
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**19 Paragraph 13BC(2)(c)**

Repeal the paragraph, substitute:

- (c) the operator has or will have adequate insurance, or other financial security, in respect of an amount the operator would be required to pay if a costs order were made in relation to an environmental emergency arising from the activity; and
- (d) the amount for which the operator is indemnified under that insurance, or other financial security, is or will be at least equal to the amount prescribed for the purpose of subparagraph 13CF(2)(b)(ii).

**20 Paragraph 13BE(c)**

Repeal the paragraph, substitute:

- (c) a condition that the operator must have adequate insurance, or other financial security, in respect of an amount the operator would be required to pay if a costs order were made in relation to an environmental emergency arising from the activity;
- (d) a condition that the amount for which the operator is indemnified under that insurance, or other financial security,

is at least equal to the amount prescribed for the purpose of subparagraph 13CF(2)(b)(ii).

## **21 After Division 4 of Part 3B**

Insert:

### **Division 5—Offences etc. relating to environmental protection approvals**

#### **13BI Activity must not be carried on without environmental protection approval**

- (1) An operator contravenes this subsection if:
  - (a) the operator organises an activity to be carried on in the Antarctic; and
  - (b) a person carries on the activity at a particular time; and
  - (c) at that time, the operator does not hold an environmental protection approval in relation to the activity.
- (2) A person contravenes this subsection if:
  - (a) the person carries on an activity in the Antarctic at a particular time; and
  - (b) the activity was organised by an operator; and
  - (c) at that time, the operator does not hold an environmental protection approval in relation to the activity.
- (3) Subsections (1) and (2) do not apply if:
  - (a) the activity is carried on in an emergency:
    - (i) to save a person from death or serious injury; or
    - (ii) to secure the safety of a ship or aircraft, or the safety of equipment or facilities of high value; or
    - (iii) to protect the environment; or
  - (b) the operator is authorised to carry on the activity under a law of a Contracting Party; or
  - (c) the activity is carried on in compliance with a direction given to the operator under subsection 13CD(1).

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*Offence*

- (4) A person commits an offence if the person contravenes subsection (1) or (2). The physical elements of the offence are set out in that subsection.

Penalty: Imprisonment for 7 years or 420 penalty units, or both.

Note: A defendant bears an evidential burden in relation to the matters in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

*Civil penalty provision*

- (5) A person is liable to a civil penalty if the person contravenes subsection (1) or (2).

Civil penalty: 1,000 penalty units.

Note: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 22N).

- (6) A person who wishes to rely on subsection (3) in proceedings for a civil penalty order bears an evidential burden in relation to the matters in that subsection.

**13BJ Non-compliance with conditions**

- (1) An operator contravenes this subsection if:
- (a) the operator holds an environmental protection approval in relation to an activity; and
  - (b) a person carries on the activity; and
  - (c) the conditions imposed on the approval are not complied with.
- (2) Subsection (1) does not apply if:
- (a) the activity is carried on in an emergency:
    - (i) to save a person from death or serious injury; or
    - (ii) to secure the safety of a ship or aircraft, or the safety of equipment or facilities of high value; or
    - (iii) to protect the environment; or

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- (b) the operator is authorised to carry on the activity under a law of a Contracting Party; or
- (c) the activity is carried on in compliance with a direction given to the operator under subsection 13CD(1).

#### *Offence*

- (3) An operator commits an offence if the operator contravenes subsection (1). The physical elements of the offence are set out in that subsection.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

#### *Civil penalty provision*

- (4) An operator is liable to a civil penalty if the operator contravenes subsection (1).

Civil penalty: 500 penalty units.

Note: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 22N).

- (5) An operator who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matters in that subsection.

## 22 After Part 3B

Insert:

## Part 3C—Environmental emergencies

### Division 1—Introduction

#### 13CA Simplified outline

The following is a simplified outline of this Part:



This Part deals with environmental emergencies in the Antarctic.

If an environmental emergency is caused by an activity carried on by a person in the Antarctic, the operator who organised the activity must immediately notify the Minister, or an authorised officer, of the emergency.

The operator must also ensure that prompt and effective response action is taken in relation to the emergency.

The Minister may give the operator a direction in relation to the emergency. The operator must comply with the direction.

If the operator does not take prompt and effective response action in relation to the emergency, a Court may in certain circumstances make a costs order against the operator.

This Part also establishes the Antarctic Environmental Liability Special Account and deals with other miscellaneous matters.

## **Division 2—Obligations of operators in relation to environmental emergencies**

### **13CB Notification of an environmental emergency**

- (1) An operator contravenes this subsection if:
  - (a) the operator organises an activity to be carried on in the Antarctic; and
  - (b) a person carries on the activity; and
  - (c) the activity causes an environmental emergency; and
  - (d) the operator does not immediately notify the Minister, or an authorised officer, of the emergency.
- (2) Subsection (1) does not apply if the operator has already notified a Party to the Madrid Protocol of the environmental emergency.

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#### *Offence*

- (3) An operator commits an offence if the operator contravenes subsection (1). The physical elements of the offence are set out in that subsection.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

#### *Civil penalty provision*

- (4) An operator is liable to a civil penalty if the operator contravenes subsection (1).

Civil penalty: 500 penalty units.

Note: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 22N).

- (5) An operator who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matter in that subsection.

### **13CC Operator must ensure that prompt and effective response action is taken**

- (1) An operator contravenes this subsection if:
- (a) the operator organises an activity to be carried on in the Antarctic; and
  - (b) a person carries on the activity; and
  - (c) the activity gives rise to an environmental emergency; and
  - (d) the operator does not ensure that prompt and effective response action is taken in relation to the emergency.
- (2) Subsection (1) does not apply if the environmental emergency was caused by:
- (a) an act or omission necessary to protect human life or safety; or
  - (b) an event constituting in the circumstances of the Antarctic a natural disaster of an exceptional character if:

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- (i) the event could not have been reasonably foreseen, either generally or in the particular case; and
- (ii) all reasonable preventative measures designed to reduce the risk of environmental emergencies, and their potential adverse impact, were taken by the operator; or
- (c) an act of terrorism; or
- (d) an act of belligerency against the activities organised by the operator.

*Offence*

- (3) An operator commits an offence if the operator contravenes subsection (1). The physical elements of the offence are set out in that subsection.

Penalty: Imprisonment for 7 years or 420 penalty units, or both.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

*Civil penalty provision*

- (4) An operator is liable to a civil penalty if the operator contravenes subsection (1).

Civil penalty: 1,000 penalty units.

Note: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 22N).

- (5) An operator who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matters in that subsection.

**Division 3—Ministerial directions****13CD Directions in relation to an environmental emergency**

- (1) If:
- (a) a person carries on an activity in the Antarctic; and
  - (b) the activity gives rise to an environmental emergency;

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the Minister may give the operator who organised the activity a written direction in relation to the emergency.

- (2) If an operator is given a direction under subsection (1), the operator must comply with the direction.

Note: See section 13CE for non-compliance with a direction.

- (3) Neither the Minister nor the Commonwealth is liable to any action or proceeding, whether civil or criminal, for or in relation to an act done, or omitted to be done, by the operator in compliance, or purported compliance, with the direction.

- (4) A direction given under subsection (1) is not a legislative instrument.

### 13CE Non-compliance with direction

- (1) An operator contravenes this subsection if:
- (a) the operator is given a direction under subsection 13CD(1); and
  - (b) the operator engages in conduct; and
  - (c) the conduct contravenes the direction.
- (2) Subsection (1) does not apply if the operator engages in the conduct in an emergency:
- (a) to save a person from death or serious injury; or
  - (b) to secure the safety of a ship or aircraft, or the safety of equipment or facilities of high value; or
  - (c) to protect the environment.

#### *Offence*

- (3) An operator commits an offence if the operator contravenes subsection (1). The physical elements of the offence are set out in that subsection.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

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*Civil penalty provision*

- (4) An operator is liable to a civil penalty if the operator contravenes subsection (1).

Civil penalty: 500 penalty units.

Note: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 22N).

- (5) An operator who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matters in that subsection.

**Division 4—Costs orders****13CF Costs order—response action taken by Party to Madrid Protocol**

- (1) If:
- (a) an activity is carried on in the Antarctic; and
  - (b) the activity gives rise to an environmental emergency; and
  - (c) the operator who organised the activity:
    - (i) is not a Party to the Madrid Protocol; and
    - (ii) does not take prompt and effective response action in relation to the emergency; and
  - (d) a Party to the Protocol takes response action under Article 5(2) of Annex VI to the Protocol (whether directly or through an agent or other person authorised by the Party);
- a Court may, on application, order the operator to pay an amount to the Party.

*Limit on amount payable*

- (2) The amount must not exceed:
- (a) if the environmental emergency resulted from an act or omission of the operator that was done with the intention of causing the emergency, or recklessly and with the knowledge that the emergency would probably result—the costs incurred by the Party in taking the response action; or

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- (b) otherwise—the lower of the following:
  - (i) the costs incurred by the Party in taking the response action;
  - (ii) the amount prescribed by the regulations.

*Exception*

- (3) The Court must not make an order under subsection (1) if the environmental emergency was caused by:
  - (a) an act or omission necessary to protect human life or safety; or
  - (b) an event constituting in the circumstances of the Antarctic a natural disaster of an exceptional character if:
    - (i) the event could not have been reasonably foreseen, either generally or in the particular case; and
    - (ii) all reasonable preventative measures designed to reduce the risk of environmental emergencies, and their potential adverse impact, were taken by the operator; or
  - (c) an act of terrorism; or
  - (d) an act of belligerency against the activities organised by the operator.

*Application for order*

- (4) An application for an order under subsection (1) may be made by:
  - (a) if the Party is Australia—the Minister; or
  - (b) if the Party is another Party to the Madrid Protocol—that Party.
- (5) An application for an order under subsection (1) must be made within whichever of the following periods ends later:
  - (a) the period of 3 years beginning on the day on which the response action begins;
  - (b) the period of 3 years beginning on the day on which the Party knew, or ought reasonably to have known, the identity of the operator.
- (6) Despite paragraph (5)(b), the application must not be made more than 15 years after the day on which the response action begins.

**13CG Costs order—no response action taken by any person**

- (1) If:
- (a) an activity is carried on in the Antarctic; and
  - (b) the activity gives rise to an environmental emergency; and
  - (c) the operator who organised the activity:
    - (i) is not a Party to the Madrid Protocol; and
    - (ii) does not take prompt and effective response action in relation to the emergency; and
  - (d) no Party to the Protocol takes response action under Article 5(2) of Annex VI to the Protocol (whether directly or through an agent or other person authorised by the Party);
- a Court may, on application by the Minister, order the operator to pay an amount to the Commonwealth.

*Limit on amount payable*

- (2) The amount must not exceed:
- (a) if the environmental emergency resulted from an act or omission of the operator that was done with the intention of causing the emergency, or recklessly and with the knowledge that the emergency would probably result—the costs of the response action that should have been taken; or
  - (b) otherwise—the lower of the following:
    - (i) the costs of the response action that should have been taken;
    - (ii) the amount prescribed by the regulations.

*Exception*

- (3) The Court must not make an order under subsection (1) if the operator proves that the environmental emergency was caused by:
- (a) an act or omission necessary to protect human life or safety; or
  - (b) an event constituting in the circumstances of the Antarctic a natural disaster of an exceptional character if:
    - (i) the event could not have been reasonably foreseen, either generally or in the particular case; and

- (ii) all reasonable preventative measures designed to reduce the risk of environmental emergencies, and their potential adverse impact, were taken by the operator; or
- (c) an act of terrorism; or
- (d) an act of belligerency against the activities organised by the operator.

*Application for order*

- (4) The application must be made within the period of 15 years beginning on the day on which the Commonwealth became aware of the environmental emergency.

**13CH Enforcement of costs order**

- (1) This section applies if a costs order is made that an operator pay an amount to either of the following (the *plaintiff*):
  - (a) a Party to the Madrid Protocol;
  - (b) the Commonwealth.
- (2) The amount is taken to be a civil debt payable by the operator to the plaintiff.
- (3) The plaintiff may enforce the order as if it were an order made in civil proceedings against the operator to recover a debt due by the operator to the plaintiff.
- (4) The debt arising from the order is taken to be a judgement debt.

**13CI Joint and several liability**

- (1) If an environmental emergency arises from an activity or activities carried on in the Antarctic that were organised by 2 or more operators, the operators are jointly and severally liable in relation to the emergency.
- (2) Despite subsection (1), an operator is not jointly and severally liable in relation to any part of the environmental emergency that did not result from an activity or activities organised by the operator.



## Division 5—Special Account

### 13CJ Name of Account

- (1) The Antarctic Environmental Liability Special Account is established by this section.
- (2) The Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

### 13CK Credits to the Account

There must be credited to the Account amounts equal to the following:

- (a) amounts paid to the Commonwealth under a costs order;
- (b) voluntary payments made by a person to the Commonwealth for the purposes of the Account;
- (c) amounts of any gifts given or bequests made for the purposes of the Account.

Note: An Appropriation Act may contain a provision to the effect that, if any of the purposes of a Special Account is a purpose that is covered by an item in the Appropriation Act (whether or not the item expressly refers to the Special Account), then amounts may be debited against the appropriation for that item and credited to that Special Account.

### 13CL Purposes of the Account

The purposes of the Account are as follows:

- (a) making payments to the fund referred to in Article 12 of Annex VI to the Madrid Protocol;
- (b) paying or discharging the costs, expenses and other obligations incurred by the Commonwealth in taking response action under Article 5(2) of that Annex (whether directly or through an agent or other person authorised by the Commonwealth);
- (c) meeting the expenses of administering the Account.

Note: See section 21 of the *Financial Management and Accountability Act 1997* (debits from Special Accounts).

## **Division 6—Miscellaneous**

### **13CM Payment to fund**

If the Commonwealth is required or permitted to make a payment to the fund referred to in Article 12 of Annex VI to the Madrid Protocol, the Minister must cause the payment to be made in a timely manner.

### **23 Before subsection 17(5)**

Insert:

- (4B) An inspector may require any person whom he or she finds carrying on, or whom he or she reasonably suspects of having carried on, an activity in respect of which an operator is required to hold an environmental protection approval to produce:
- (a) the approval; or
  - (b) evidence of the existence and contents of the approval.

### **24 After paragraph 19(3)(c)**

Insert:

- (ca) the action in question was done in compliance with a direction given to the person under subsection 13CD(1); or

### **25 At the end of subsection 19(3)**

Add:

Note: A defendant bears an evidential burden in relation to the matters in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

### **26 At the end of section 19AA**

Add:

- (3) Subsections (1) and (2) do not apply in relation to an action if it is done in compliance with a direction given to the person under subsection 13CD(1).

Note: A defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

**27 Subsection 20(2)**

Repeal the subsection, substitute:

- (2) Subsection (1) does not apply in relation to conduct if the conduct is engaged in by the person in compliance with a direction given to the person under subsection 13CD(1).

Note: A defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

**28 Subsections 21(2), 21AA(5) and 21AB(4)**

Repeal the subsections.

**29 At the end of subsection 21A(4) (before the note)**

Add:

- ; or (c) the activity was carried on in compliance with a direction given to the person under subsection 13CD(1).

**30 At the end of section 27**

Add:

- ; or (e) the power under section 13CD to give a direction; or  
(f) the power under section 13CF or 13CG to apply for a costs order.

**Schedule 2****31 At the end of subsections 13AI(3) and 13AJ(2)**

Add:

- ; or (c) the activity is carried on in compliance with a direction given to the non-State operator under subsection 13CD(1).

**Schedule 3****1 Subsection 3(1)**

Insert:

*guide*, in relation to the passengers of a vessel, means a person:

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- (a) who, in the opinion of the person (the *organiser*) who organises the vessel to take the passengers to the Antarctic, has relevant expertise in relation to the Antarctic; and
- (b) who is engaged by the organiser to be a guide in relation to the passengers.

## 2 Subsection 3(1)

Insert:

*passenger*, of a vessel, does not include:

- (a) a person employed or engaged in any capacity on board the vessel on the business of the vessel; or
- (b) a guide.

## 3 After Part 2

Insert:

# Part 2A—Vessels

## 12AA Simplified outline

The following is a simplified outline of this Part:

This Part is about vessels that carry passengers to the Antarctic. The limits set out in this Part apply if the vessels are organised to carry the passengers by a person who is not a Contracting Party to the Treaty.

## 12AB Prohibition on passengers disembarking from certain vessels

- (1) A person contravenes this subsection if:
  - (a) the person is not a Contracting Party to the Treaty; and
  - (b) the person organises a vessel to carry passengers to the Antarctic; and
  - (c) one or more passengers of the vessel (the *first vessel*) disembark (whether or not from the first vessel or another vessel) onto land within the Antarctic; and

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- (d) immediately before any passengers disembark from the first vessel, that vessel is carrying more than the number of passengers prescribed by the regulations.
- (2) Subsection (1) does not apply if the passengers disembark in an emergency:
  - (a) to save a person from death or serious injury; or
  - (b) to secure the safety of a ship or aircraft, or the safety of equipment or facilities of high value; or
  - (c) to protect the environment.

*Offence*

- (3) A person commits an offence if the person contravenes subsection (1). The physical elements of the offence are set out in that subsection.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

*Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 1,000 penalty units.

Note: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 22N).

- (5) A person who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matters in that subsection.

**12AC Limit on the number of passengers that disembark from vessels**

- (1) A person contravenes this subsection if:
  - (a) the person is not a Contracting Party to the Treaty; and

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- (b) the person organises a vessel to carry passengers to the Antarctic; and
  - (c) one or more passengers of the vessel disembark (whether or not from that vessel or another vessel) onto land within the Antarctic; and
  - (d) at a particular time, the number of passengers on land within the Antarctic is higher than the number of passengers prescribed by the regulations.
- (2) Subsection (1) does not apply if the passengers disembark in an emergency:
- (a) to save a person from death or serious injury; or
  - (b) to secure the safety of a ship or aircraft, or the safety of equipment or facilities of high value; or
  - (c) to protect the environment.

#### *Offence*

- (3) A person commits an offence if the person contravenes subsection (1). The physical elements of the offence are set out in that subsection.

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

#### *Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 500 penalty units.

Note: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 22N).

- (5) A person who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matters in that subsection.

**12AD Requirement relating to the number of guides in relation to disembarked passengers**

- (1) A person contravenes this subsection if:
- (a) the person is not a Contracting Party to the Treaty; and
  - (b) the person organises a vessel to carry passengers to the Antarctic; and
  - (c) one or more passengers of the vessel disembark (whether or not from that vessel or another vessel) onto land within the Antarctic; and
  - (d) at a particular time, the number worked out by dividing the number of guides, in relation to the passengers, who are on the land by the number of passengers who are on the land is less than the number prescribed by the regulations.
- (2) Subsection (1) does not apply if the passengers disembark in an emergency:
- (a) to save a person from death or serious injury; or
  - (b) to secure the safety of a ship or aircraft, or the safety of equipment or facilities of high value; or
  - (c) to protect the environment.

*Offence*

- (3) A person commits an offence if the person contravenes subsection (1). The physical elements of the offence are set out in that subsection.

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

*Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 500 penalty units.

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Note: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 22N).

- (5) A person who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matters in that subsection.

### 12AE Requirement to coordinate

- (1) A person (the *first person*) contravenes this subsection if:
- (a) the first person is not a Contracting Party to the Treaty; and
  - (b) the first person organises a vessel to carry passengers to the Antarctic; and
  - (c) the first person fails to coordinate with any other persons:
    - (i) who are not Contracting Parties to the Treaty; and
    - (ii) who organise vessels to carry passengers to the Antarctic;with the objective that no more than one vessel is at a landing site in the Antarctic at the same time.
- (2) Subsection (1) does not apply if the first person fails to coordinate with those other persons in an emergency:
- (a) to save a person from death or serious injury; or
  - (b) to secure the safety of a ship or aircraft, or the safety of equipment or facilities of high value; or
  - (c) to protect the environment.

#### *Offence*

- (3) A person commits an offence if the person contravenes subsection (1). The physical elements of the offence are set out in that subsection.

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2). See subsection 13.3(3) of the *Criminal Code*.



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*Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 500 penalty units.

Note: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 22N).

- (5) A person who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matters in that subsection.

## Endnotes

Endnote 6—Modifications [none]

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**Endnote 6—Modifications [none]**

**Endnote 7—Misdescribed amendments [none]**

**Endnote 8—Miscellaneous [none]**